THE NATIONAL ARCHIVES

FEDERAL REGISTER

VOLUME 15 NUMBER 210

Washington, Saturday, October 28, 1950

TITLE 7—AGRICULTURE

Chapter IX—Production and Marketing Administration (Marketing Agreements and Orders), Department of Agriculture

[Lemon Reg. 354]

PART 953—LEMONS GROWN IN CALIFORNIA AND ARIZONA

LIMITATION OF SHIPMENTS

§ 953.461 *Lemon Regulation 354*—(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 53, as amended (7 CFR Part 953; 14 F. R. 3612), regulating the handling of lemons grown in the State of California or in the State of Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and upon the basis of the recommendation and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of the quantity of such lemons which may be handled, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. Shipments of lemons, grown in the State of California or in the State of Arizona, are currently subject to regulation pursuant to said amended marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein was promptly submitted to the Department after an open meeting of the Lemon Administrative Committee on October 25, 1950, such meeting was held, after giving due notice thereof to consider recommendations for regulation, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter specified; and compliance with this section will not require any special preparation on the part of persons subject thereto which cannot be completed by the effective time thereof.

(b) *Order.* (1) The quantity of lemons grown in the State of California or in the State of Arizona which may be handled during the period beginning at 12:01 a. m., P. s. t., October 29, 1950, and ending at 12:01 a. m., P. s. t., November 5, 1950, is hereby fixed as follows:

(i) District 1: Unlimited movement;

(ii) District 2: 225 carloads;

(iii) District 3: Unlimited movement.

(2) The prorate base of each handler who has made application therefor, as provided in the said amended marketing agreement and order, is hereby fixed in accordance with the prorate base schedule which is attached to Lemon Regulation No. 353 (15 F. R. 7047), and made a part hereof by this reference.

(3) As used in this section, "handled," "handler," "carloads," "prorate base," "District 1," "District 2" and "District 3," shall have the same meaning as when used in the said amended marketing agreement and order.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. and Sup., 608c)

Done at Washington, D. C., this 26th day of October 1950.

[SEAL] S. R. SMITH,
Director, Fruit and Vegetable Branch, Production and Marketing Administration.

[F. R. Doc. 50-9621; Filed, Oct. 27, 1950; 8:53 a. m.]

CONTENTS

FEDERAL REGISTER

Published daily, except Sundays, Mondays, and days following official Federal holidays, by the Division of the Federal Register, National Archives and Records Service, General Services Administration, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U. S. C., ch. 8B), under regulations prescribed by the Administrative Committee of the Federal Register, approved by the President. Distribution is made only by the Superintendent of Documents, Government Printing Office, Washington 25, D. C.

The regulatory material appearing herein is keyed to the Code of Federal Regulations, which is published, under 50 titles, pursuant to section 11 of the Federal Register Act, as amended June 19, 1937.

The FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $1.50 per month or $15.00 per year, payable in advance. The charge for individual copies (minimum 15¢) varies in proportion to the size of the issue. Remit check or money order, made payable to the Superintendent of Documents, directly to the Government Printing Office, Washington 25, D. C.

There are no restrictions on the republication of material appearing in the FEDERAL REGISTER.

CONTENTS—Continued

Federal Communications Commission — Page

Notices:
- Canadian broadcast stations; list of changes, proposed changes, and corrections in assignments — 7278
- Extension of license terms:
  - Experimental Class 2 maritime stations of petroleum industry — 7278
  - VHF specialized operational radiotelephone maritime experimental Class 2 stations — 7278
- FM Station WFMU; change in channel allocation — 7277

CONTENTS—Continued

Federal Communications Commission—Continued — Page

Notices—Continued
- Hearings, etc.:
  - American Telephone and Telegraph Co. et al — 7280
  - Belen Broadcasting Corp. (KENE) — 7280
  - Coastwise Line — 7279
  - Mid-Carolina Broadcasting Co. (WSAT) — 7279
  - Monroe Broadcasting Co — 7279
  - Poplar Bluff Broadcasting Co. (KWOC) and Lee Broadcasting, Inc. (WTAD) — 7279
  - South Saint Paul Broadcasting Co — 7279

Rules and regulations:
- Frequency allocation and radio treat matters; miscellaneous amendments; correction — 7270
- Practice and procedure; licensees in domestic public land mobile radio services — 7267
- Public radiocommunication services other than maritime mobile; establishment of policy effecting 60 kc. adjacent channel frequency assignments — 7268
- Radio broadcast services: inspection of tower lights and associated control equipment and discontinuance of operation — 7268

Federal Power Commission

Notices:
- Hearings, etc.:
  - Arkansas Louisiana Gas Co — 7281
  - Athol Gas and Electric Co. et al — 7282
  - Cities Service Gas Co. and Ohio Fuel Gas Co — 7281
  - Crystal City Gas Co — 7282
  - El Paso Natural Gas Co — 7282
  - Gulf Public Service Co., Inc — 7282
  - Mississippi River Fuel Corp — 7281
  - Natural Gas Pipeline Co. of America (3 documents) — 7281, 7283
  - Northern Natural Gas Co — 7283
  - Ohio Gas Co — 7281
  - Otter Tail Power Co — 7282
  - Pacific Power & Light Co — 7282
  - Panhandle Eastern Pipe Line Co — 7281
  - United Gas Pipe Line Co — 7282

Federal Reserve System

Rules and regulations:
- Consumer credit; interpretation — 7243

Indian Affairs Bureau

Rules and regulations:
- Crow Indians; determination of competency — 7243

Interior Department

See also Indian Affairs Bureau; Land Management, Bureau of; National Park Service.

Notices:
- Southwestern Power Administration; revised statement of organization — 7276

Internal Revenue Bureau

Rules and regulations:
- Brandy production; correction — 7244

CONTENTS—Continued

Interstate Commerce Commission — Page

Notices:
- Applications for relief:
  - Batteries, dry, from Ohio to East — 7284
  - Magazines:
    - Chicago, Ill., to East — 7285
    - Des Moines, Iowa, to official territory — 7285
  - Newsprint paper to Texas; proportional rates — 7284
  - Petroleum and petroleum products from and to points in South — 7285
  - Rubber, synthetic, from Southwest:
    - Oelwein, Iowa — 7284
    - South Palmyra, N. Y — 7284
- Midwest Motor Carriers Bureau, Inc.; application for approval of agreement — 7285

Justice Department

See Alien Property, Office of.

Labor Department

See Wage and Hour Division.

Land Management, Bureau of

Notices:
- Filing of plats of survey:
  - Alabama — 7273
  - Arizona — 7274
  - California — 7275
  - Nevada — 7275
- Orders providing for opening of public lands:
  - Arizona — 7274
  - California — 7274

National Park Service

Proposed rule making:
- Everglades National Park; commercial fishing — 7272

National Production Authority

Rules and regulations:
- Aluminum — 7264

National Security Resources Board

Rules and regulations:
- Necessity certificates, issuance — 7265

Production and Marketing Administration

Proposed rule making:
- Poultry, dressed; form of application and contract for inspection for condition only on contract basis — 7271
- U. S. Standards; extensions of time:
  - Molasses, edible sugarcane — 7271
  - Sirup, sugarcane — 7271

Rules and regulations:
- Lemons in California and Arizona; limitation of shipments — 7241

Securities and Exchange Commission

Notices:
- Hearings, etc.:
  - American Natural Gas Co. and Milwaukee Gas Light Co — 7286
  - Niagara Mohawk Power Corp — 7285

CONTENTS—Continued

CODIFICATION GUIDE

A numerical list of the parts of the Code of Federal Regulations affected by documents published in this issue. Proposed rules, as opposed to final actions, are identified as such.

CODIFICATION GUIDE—Con.

TITLE 12—BANKS AND BANKING

Chapter II—Federal Reserve System

Subchapter A—Board of Governors of the Federal Reserve System

[Reg. W]

PART 222—CONSUMER CREDIT

INTERPRETATION

§ 222.112 *Effect of October 16, 1950, amendment.* Effective October 16, 1950 (15 F. R. 6931, October 17, 1950), this part was amended to change, among other things, the minimum down payment or maximum loan value and maximum maturity requirements for certain transactions subject to this part. Therefore, the interpretations appearing at §§ 222.101 through 222.111 inclusive, and particularly §§ 222.107 through 222.111 inclusive (15 F. R. 6985, October 19, 1950), should be read in the light of the aforementioned amendment, especially any examples used in those interpretations which may involve such matters as minimum down payments, maximum loan values, or maximum maturities.

(Sec. 5, 40 Stat. 415, as amended, Title VI, Pub. Law 774, 81st Cong.; 50 U. S. C. App. 5. E. O. 8843, Aug. 9, 1941, 6 F. R. 4035; 3 CFR, 1941 Supp.)

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.
[SEAL] S. R. CARPENTER,
Secretary.

[F. R. Doc. 50-9544; Filed, Oct. 27, 1950; 8:48]

TITLE 14—CIVIL AVIATION

Chapter I—Civil Aeronautics Board

Subchapter A—Civil Air Regulations

[Supp. 7, Amdt. 53]

PART 60—AIR TRAFFIC RULES

DANGER AREA ALTERATIONS

The danger area alterations appearing hereinafter have been coordinated with the civil operators involved, the Army, the Navy, and the Air Force, through the Air Coordinating Committee, Airspace Subcommittee, and are adopted when indicated in order to promote safety of the flying public. Compliance with the notice, procedures, and effective date provisions of section 4 of the Administrative Procedure Act would be impracticable and contrary to the public interest, and therefore is not required. Title 14, § 60.13–1 is amended as follows:

1. An Offutt AFB, Nebraska, area is added to read:

Name and location (chart)	Description by geographical coordinates	Designated altitudes	Time of designation	Using agency
OFFUTT AFB (Des Moines and Lincoln Charts).	Beginning at lat. 40°50′45″ N, long. 95°46′45″ W; SE to lat. 40°30′00″ N, long. 95°30′15″ W; due W to long. 96°31′00″ W; due N to lat. 40°51′15″ N; ENE to lat. 40°50′45″ N, long. 95°46′45″ W, point of beginning.	From 2500 feet to 12,000 feet.	Continuous...	Strategic Air Command, Offutt AFB, Omaha, Nebr.

(Sec. 205, 52 Stat. 984, as amended; 49 U. S. C. 425. Interpret or apply sec. 601, 52 Stat. 1007, as amended; 49 U. S. C. 551)

This amendment shall become effective on October 28, 1950.

DONALD W. NYROP,
Administrator of Civil Aeronautics.

[F. R. Doc. 50-9580; Filed, Oct. 27, 1950; 8:55 a. m.]

TITLE 25—INDIANS

Chapter I—Bureau of Indian Affairs, Department of the Interior

Subchapter T—Patents in Fee, Competency Certificates, Sales and Reinvestment of Proceeds

PART 243—DETERMINATION OF COMPETENCY: CROW INDIANS

Sec.
243.1 Purpose of regulations.
243.2 Application and examination.
243.3 Application form.
243.4 Factors determining competency.
243.5 Children of competent Indians.
243.6 Appeals.

AUTHORITY: §§ 243.1 to 243.6 issued under sec. 12, 41 Stat. 755, 46 Stat. 1495, as amended.

§ 243.1 *Purpose of regulations.* The regulations in this part govern the procedures in determining the competency of Crow Indians under Public Law 303, 81st Congress, approved September 8, 1949.

§ 243.2 *Application and examination.* The Commissioner of Indian Affairs or his duly authorized representative, upon the application of any unenrolled adult member of the Crow Tribe, shall classify him by placing his name to the competent or incompetent rolls established pursuant to the act of June 4, 1920 (41 Stat. 751), and upon application shall determine whether those persons whose names now or hereafter appear on the incompetent roll shall be reclassified as competent and their names placed on the competent roll.

§ 243.3 *Application form.* The application form shall include, among other things: (a) The name of the applicant; (b) his age, residence, degree of Indian blood, and education; (c) his experience in farming, cattle raising, business, or other occupation (including home-making); (d) his present occupation, if any; (e) a statement concerning the applicant's financial status, including

his average earned and unearned income for the last two years from restricted leases and from other sources, and his outstanding indebtedness to the United States, to the tribe, or to others; (f) a description of his property and its value, including his allotted and inherited lands; and (g) the name of the applicant's spouse, if any, and the names of his minor children, if any, and their ages, together with a statement regarding the land, allotted and inherited, held by each.

§ 243.4 *Factors determining competency.* Among the matters to be considered by the Commissioner of Indian Affairs in determining competency are the amount of the applicant's indebtedness to the tribe, to the United States Government, and to others; whether he is a public charge or a charge on friends and relatives, or will become such a charge, by reason of being classed as competent; and whether the applicant has demonstrated that he possesses the ability to take care of himself and his property, to protect the interests of himself and his family, to lease his land and collect the rentals therefrom, to lease the land of his minor children, to prescribe in lease agreements those provisions which will protect the land from deterioration through over-grazing and other improper practices, and to assume full responsibility for obtaining compliance with the terms of any lease.

§ 243.5 *Children of competent Indians.* Children of competent Indians who have attained or upon attaining their majority shall automatically become competent except any such Indian who is declared incompetent by a court of competent jurisdiction or who is incompetent under the laws of the State within which he resides.

§ 243.6 *Appeals.* An appeal to the Secretary of the Interior may be made within 30 days from the date of notice to the applicant of the decision of the Commissioner of Indian Affairs.

WILLIAM E. WARNE,
Acting Secretary of the Interior.

OCTOBER 23, 1950.

[F. R. Doc. 50-9512; Filed, Oct. 27, 1950; 8:45 a. m.]

TITLE 26—INTERNAL REVENUE

Chapter I—Bureau of Internal Revenue, Department of the Treasury

Subchapter C—Miscellaneous Excise Taxes

[Regulation 5]

PART 184—PRODUCTION OF BRANDY

Correction

In F. R. Document 50-7178, appearing at page 5552, of the issue for Tuesday, August 22, 1950, make the following changes:

1. In § 184.63 the reference to "§ 184.325" in the last sentence, should read "§ 184.326."

The section as corrected will read as follows:

§ 184.63 *Changes requiring approval.* Where there is to be a change in the distance between a fruit distillery and a rectifying plant located within 600 feet of each other, as a result of the extension or curtailment, or other change of either premises, a new special application, in triplicate, must be filed with the district supervisor by the proprietor of the premises which are to be extended or curtailed. Where a change occurs in the proprietorship of a fruit distillery or rectifying plant located within 600 feet of each other, the new proprietor shall file with the district supervisor a new special application, in triplicate. Unless the fruit distillery premises are extended or curtailed as the result of such change, the change may be reflected in the next amended or annual notice, Form 27½, and plat, filed by the distiller. Such new special application shall be considered and disposed of in accordance with the procedure prescribed in § 184.326.

(53 Stat 314, 373 as amended; 26 U. S. C. 2819, 3170)

2. In § 184.309, line 4, the phrase "approved, execute the certificate of" was omitted after the phrase "may properly be".

The section as corrected will read as follows:

§ 184.309 *Approval and disposition of Form 1696.* Upon receipt of Form 1696, the district supervisor will, if he finds that the notice may properly be approved, execute the certificate of approval on all copies, and dispose of the copies in accordance with the instructions printed on the form or issued in respect thereto.

(53 Stat. 373 as amended; 26 U. S. C. 3170)

3. In § 184.460, the third sentence was omitted, the section as corrected will read as follows:

§ 184.460 *Procedure.* Carbon dioxide may be recovered from fermenters and removed from the distillery premises, provided it is first thoroughly washed or scrubbed and purified to remove the alcohol therefrom. Where carbon dioxide is recovered, the washwater may be collected in a tank and transferred by pipeline to a fermenter or to the distilling material sump, or measuring tank. Where the washwater is transferred to the fermenter or to the distilling material measuring tank, the transfer must be made prior to the testing of the distilling material at the time of distillation. Where the washwater is to be transferred to the distilling material sump after the calculated yield has been determined, the alcoholic content, the number of gallons, and the calculated yield thereof, will be determined and interlined in Part 1 of Form 15. An approved ebulliometer shall be used in determining the alcoholic content of the washwater. If the washwater is not utilized in the manufacture of brandy, it will be run into the sewer or otherwise destroyed on the premises under the supervision of the storekeeper-gauger. Entry of such disposition will not be made on Form 15.

TITLE 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

PART 526—INDUSTRIES OF A SEASONAL NATURE

BLUE STONE QUARRY, INC.

On July 8, 1940, the Administrator of the Wage and Hour Division issued a determination (5 F. R. 2526) that the northern branch of the crushed stone industry is of a seasonal nature within the meaning of section 7 (b) (3) of the Fair Labor Standards Act of 1938 (52 Stat. 1063; 29 U. S. C. 207 (b) (3)) and the regulations contained in this part.

Paragraph 8 of the above-mentioned determination provides that the determination was made without prejudice to a supplementary determination enlarging the scope of the northern branch of the industry as defined in the original determination by the inclusion therein of such plants or groups of plants, if any, as operate in the same manner and for the same reasons as the plants in the northern branch described in paragraphs 1 and 3 of that determination.

An application was filed by Blue Stone Quarry, Inc. for a supplementary determination including its plant at Acushnet, Bristol County, Massachusetts, in the northern branch of the industry.

It appears from such application that:

1. The plant at Acushnet, Bristol County, Massachusetts, normally shuts down for a period of approximately 6 months each year except for an insubstantial amount of production produced shortly before the main production season.

2. This plant is located near the counties included in the northern branch of the industry as described in the original determination, in the colder and generally more northerly part of the United States.

3. The plant ceases operations annually at a regularly recurring season of the year except for sales, maintenance, and similar work because the materials used are not available for excavation, handling, and processing in the form in which they must be excavated, handled and processed, i. e., as unfrozen ledges, and banks of blasted rock, because of climatic factors.

On September 21, 1950, upon consideration of the facts stated in said application, I determined, pursuant to § 526.5 (b) (2), that a prima facie case had been shown for enlarging the scope of the northern branch of the crushed stone industry, as defined in the determination of July 8, 1940, to include the crushed stone plant of Blue Stone Quarry, Inc., at Acushnet, Bristol County, Massachusetts.

This preliminary determination was published in the FEDERAL REGISTER on September 27, 1950, and interested persons were given 15 days from such date to file objections or a request for a hearing.

No objection or request for a hearing has been received within the said 15 days.

Accordingly, pursuant to § 526.5 (b) (2), I hereby find that the plant of Blue Stone Quarry, Inc., at Acushnet, Bristol County, Massachusetts, operates in the same manner and for the same reasons as the plants in the northern branch of the crushed stone industry as defined in the aforementioned determination of July 8, 1940 (5 F. R. 2526), and the northern branch of this industry is hereby enlarged to include the said plant of Blue Stone Quarry, Inc.

This determination shall become effective 30 days after the date of its publication in the FEDERAL REGISTER.

(52 Stat. 1060, as amended; 29 U. S. C. 201, et seq.)

Signed at Washington, D. C., this 25th day of October 1950.

WM. R. MCCOMB,
Administrator,
Wage and Hour Division.

[F. R. Doc. 50-9578; Filed, Oct. 27, 1950; 8:54 a. m.]

PART 779—RETAIL OR SERVICE ESTABLISHMENT AND RELATED EXEMPTIONS

GENERAL

AUTHORITY: §§ 779.0 to 779.28 issued under 52 Stat. 1060, as amended; 29 U. S. C. 201 et seq.

GENERAL

§ 779.0 *Introductory statement*—(a) *Scope and significance of part.* The Fair Labor Standards Act of 1938, as amended[1] (hereinafter referred to as the act), requires an employer to pay each of his employees who is engaged in commerce or in the production of goods for commerce a minimum wage of not less than 75 cents per hour and overtime compensation of not less than time and one-half the employee's regular rate of pay for all hours worked in excess of 40 in a workweek in which he is so engaged. The act, however, contains certain specific exemptions from its minimum wage and overtime requirements. Among such exemptions are those contained in section 13 (a) (2), (3), (4) and (13) of the act, which are the subject of this part. Those exemptions, where their terms are met, apply to employees employed by a retail or service establishment, employees employed by an establishment engaged in laundering, cleaning or repairing clothing or fabrics, employees employed by an exempt retail establishment which makes or processes at the establishment the goods that it sells, and employees or proprietors in retail or service establishments engaged in handling telegraphic messages for the public. These exemptions apply in each case where their specific terms are met.

This part contains the interpretations by the Administrator of the Wage and Hour Division[2] of the scope and the terms of these various exemptions. These interpretations of the law are set forth herein to provide "a practical guide to employers and employees as to how the office representing the public interest in its enforcement will seek to apply it".[3] These interpretations indicate the construction of the law which the Secretary of Labor and the Administrator believe to be correct and which will guide them in the performance of their duties under the act unless and until they are otherwise directed by authoritative decisions of the courts or conclude, upon re-examination of an interpretation, that it is incorrect.[4]

The interpretations contained in this part are interpretations on which reliance may be placed as provided in section 10 of the Portal-to-Portal Act,[5] so long as they remain effective and are not modified, amended, rescinded, or determined by judicial authority to be incorrect. However, the omission to discuss a particular problem in this part or in interpretations supplementing it should not be taken to indicate the adoption of any position by the Administrator with respect to such problem or to constitute an administrative interpretation or practice or enforcement policy.

(b) *Earlier interpretations superseded.* To the extent that interpretations issued since the date of the enactment of the Fair Labor Standards Act of 1938 and contained in Interpretative Bulletin No. 6, Retail and Service Establishments (originally issued December 1938, revised June 1941) and in the statements of interpretation and enforcement policy on this subject published in the FEDERAL REGISTER prior to January 25, 1950, as Part 779,[6] and in releases, opinion letters, and other statements relating to the retail or service establishment exemption and to the other subjects discussed in this part are inconsistent with the provisions of the Fair Labor Standards Amendments of 1949, such interpretations were terminated on

---

[1] Pub. No. 718, 75th Cong., 3d. Sess. (52 Stat. 1060), as amended by the act of June 26, 1940 (Pub. Res. No. 83, 76th Cong., 3d Sess.) (54 Stat. 611); by Reorganization Plan No. 2 (60 Stat. 1095) effective July 16, 1946; by the Portal-to-Portal Act of 1947, approved May 14, 1947 (61 Stat. 84); by the Fair Labor Standards Amendments of 1949, approved October 26, 1949 (Pub. Law 393, 81st Cong., 1st Sess., c. 736, 63 Stat. 910); and by Reorganization Plan No. 6 of 1950 (15 F. R. 3174), effective May 24, 1950.

[2] Under Reorganization Plan No. 6 of 1950 (see footnote 1) and pursuant to General Order No. 45A issued by the Secretary of Labor on May 24, 1950, interpretations of the provisions (other than the child labor provisions) of the Fair Labor Standards Act, as amended (see in this connection footnote 7) are issued by the Administrator of the Wage and Hour Division on the advice of the Solicitor of Labor, subject to the general direction and control of the Secretary. See 15 F. R. 3290.

[3] Skidmore v. Swift & Co., 323 U. S. 134, 138.

[4] Footnote references to some of the relevant court decisions are made for the assistance of the readers who may be interested in such decisions.

Footnote references to the legislative history of the 1949 Amendments are made at points in the part where it is believed they may be helpful. References to the Statement of the Managers on the Part of the House, appended to the Conference Report on the amendments (H. Rept. No. 1453, 81st Cong., 1st Sess.) are abbreviated: H. Mgrs. St., 1949 p. —. References to the Statement of a Majority of the Senate Conferees, 95 Cong. Rec., pp. 14874–14880, are abbreviated: Sen. St. 95 Cong. Rec., p. —. References to the Congressional Record are to the permanent volumes.

[5] Pub. Law 49, 80th Cong., 1st Sess. (61 Stat. 84), discussed in Part 790 of this chapter. See in this connection Reorganization Plan No. 6 of 1950 (15 F. R. 3174) and footnote 2.

[6] 11 F. R. 14099; 13 F. R. 1376.

January 25, 1950.[7] Effective on the date of its publication in the FEDERAL REGISTER, this part replaces and supersedes Interpretative Bulletin No. 6 and the statements previously published in the FEDERAL REGISTER as Part 779 of this chapter, which are hereby rescinded and withdrawn. All other administrative rulings, interpretations, practices and enforcement policies relating to the retail or service establishment exemption and to the other subjects discussed in this part are, to the extent that they are inconsistent with or in conflict with the principles stated in this part, rescinded and withdrawn.

§ 779.1 *Statutory provisions.* Section 13 (a) (2), (3), (4) and (13) of the act, as amended, grants exemptions from the minimum wage provisions of section 6 and the maximum hours provisions of section 7 as follows:

> The provisions of sections 6 and 7 shall not apply with respect to * * *
>
> (2) Any employee employed by any retail or service establishment more than 50 per centum of which establishment's annual dollar volume of sales of goods or services is made within the State in which the establishment is located. A "retail or service establishment" shall mean an establishment 75 per centum of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry; or
>
> (3) Any employee employed by any establishment engaged in laundering, cleaning or repairing clothing or fabrics, more than 50 per centum of which establishment's annual dollar volume of sales of such services is made within the State in which the establishment is located: *Provided*, That 75 per centum of such establishment's annual dollar volume of sales of such services is made to customers who are not engaged in a mining, manufacturing, transportation, or communications business; or
>
> (4) Any employee employed by an establishment which qualifies as an exempt retail establishment under clause (2) of this subsection and is recognized as a retail establishment in the particular industry notwithstanding that such establishment makes or processes at the retail establishment the goods that it sells: *Provided*, That more than 85 per centum of such establishment's annual dollar volume of sales of goods so made or processed is made within the State in which the establishment is located; or * * *
>
> (13) Any employee or proprietor in a retail or service establishment as defined in clause (2) of this subsection with respect to whom the provisions of sections 6 and 7 would not otherwise apply, engaged in handling telegraphic messages for the public under an agency or contract arrangement with a telegraph company where the telegraph message revenue of such agency does not exceed $500 a month; * * *

An employer claiming an exemption under any of these provisions must show affirmatively that his establishment or employee, as the case may be, meets the specific tests of the exemption claimed by him.[8]

§ 779.2 *Coverage and exemption distinguished.* As stated in § 779.0 (a), an employee must be engaged in interstate commerce or in the production of goods for interstate commerce in order to be entitled to the minimum wage and overtime benefits of the act. (In this connection, attention is directed to Part 776 of this chapter which discusses general coverage under sections 6 and 7 of the act.) It should be clear, therefore, that there will be no need to inquire into the qualification of an employee for any of the exemptions from the minimum wage and overtime benefits of the act if such employee is not within the coverage of the act.

The tests for coverage and for the exemptions are separate and distinct. Those tests are contained in their appropriate sections of the act. An employee, for example, is covered by the act during any workweek in which he engages in work in interstate commerce or in the production of goods for commerce whereas a retail or service establishment which meets the other tests of the exemption is required only to make more than 50 percent of its sales within the State in which it is located in order to qualify for the 13 (a) (2) exemption.[9]

§ 779.3 *The "establishment" basis for exemption under section 13 (a) (2), (3), and (4)—(a) Introduction.* It should be noted that the test prescribed in sections 6 and 7 is related to the nature of the employment of the particular employee. The criterion used in section 13 (a) (2), (3), and (4), on the other hand, is the character of the establishment by which the employee is employed. Thus, under sections 6 and 7 some employees of a given employer may be covered and others may not be covered. If, however, the exemption contained in section 13 (a) (2), or (3), or (4), is applicable to an establishment all the employees who, within the meaning of these exemptions, are "employed by" that establishment are exempted from sections 6 and 7.[10]

(b) *"Establishment" defined and distinguished.* The term "establishment" as used in section 13 (a) (2), (3), and (4) means a distinct physical place of business.[11] The term is not synonymous with the words "business" or "enterprise" as applied to multi-unit companies. Such business organizations operate a number of establishments, some of which may qualify for exemption and some of which may not. For example, a manufacturing company which operates several places of business for the sale of its manufactured products operates a number of separate and different types of establishments within the meaning of the exemptions. Each physically separate place of business must be considered as a separate establishment. Thus, in the case of chain-store systems, branch stores, groups of independent stores organized to carry on business in a manner similar to chain-store systems, and retail outlets operated by manufacturing or distributing concerns, each physically separated unit or branch store will, in the ordinary case, be considered a separate establishment within the meaning of the exemptions. The principles applicable in determining whether or not a given employee is employed "by" an exempt establishment of such an employer are considered in § 779.4.

(c) *The single establishment; examples.* The unit store will ordinarily constitute the establishment contemplated by the exemptions, even though the employer may operate it as a concession in a hotel, railroad station or general market. The mere fact that a store is departmentalized will not alter the rule. For example, the typical large department store carries a wide variety of lines of merchandise which are ordinarily segregated or departmentalized not only as to location within the store, but also as to operation and records. However, if there is unity of ownership of all departments, and if all departments are operated by the employer as a single store, the department store, taken as a whole, will ordinarily be considered to be the establishment within the meaning of the exemptions. Similarly, a bakery or a tailor shop may produce goods in a back room and sell them in the adjoining front room. If there is unity of ownership and if the back room and the front room are operated by the employer as a single store, the entire premises will ordinarily be considered to be one single establishment for purposes of the tests of the exemption notwithstanding the fact that the two functions, of making and of selling the goods, are separated by a partition or a wall.[12]

(d) *Segregation of establishments on the same premises.* Although, as we have seen, two or more departments of a business may constitute a single establishment as described in the preceding paragraph, two or more physically separated portions of an enterprise located on the same premises, and even under the same roof, may, under some circumstances, constitute more than one establishment for purposes of the exemptions.[13] Many business enterprises, in the ordinary course of business, engage both in making retail sales and in some other activity such as, for purposes of illustration, wholesale selling. In such a

---

[7] Section 16 (c) of the Fair Labor Standards Amendments of 1949 (63 Stat. 910) provides: "Any order, regulation, or interpretation of the Administrator of the Wage and Hour Division or of the Secretary of Labor, and any agreement entered into by the Administrator or the Secretary, in effect under the provisions of the Fair Labor Standards Act of 1938, as amended, on the effective date of this act, shall remain in effect as an order, regulation, interpretation, or agreement of the Administrator or the Secretary, as the case may be, pursuant to this act, except to the extent that any such order, regulation, interpretation, or agreement may be inconsistent with the provisions of this act, or may from time to time be amended, modified, or rescinded by the Administrator or the Secretary, as the case may be, in accordance with the provisions of this act."

[8] Phillips Co. v. Walling, 324 U. S. 490.

[9] See § 779.16 (b) discussing the distinction between an interstate sale and a sale "made within the State".

[10] See § 779.4 discussing "employed by".

[11] Phillips Co. v. Walling, 324 U. S. 490. And see remarks of Senator Holland, 95 Cong. Rec., p. 12505; H. Mgrs. St., 1949, p. 25; Sen. St., 95 Cong. Rec., p. 14877; see also 95 Cong. Rec., p. 12579, where Senator George said: "* * * I wish to say that the word 'establishment' has been very well defined in the Wage and Hour Act. It means now a single physically separate place of business which possesses the characteristics of a retailer and it does not mean an entire business enterprise".

[12] H. Mgrs. St., 1949, p. 27.

[13] Cf. Grant v. Bergdorf & Goodman Co., 172 F. 2d 109 (C. A. 2); Walling v. Goldblatt Bros., 152 F. 2d 475 (C. A. 7).

situation, the exemption may apply to the retail portion of the business if such portion is segregated from the remainder in such a way that the retail portion of the business would, to all intents and purposes, constitute a separate establishment.

In order to effect such a result, physical separation, although necessary, is not enough. In order to be considered as a separate establishment for purposes of the exemption, the retail portion of the business must be distinct and separate from the branch devoted to other activities. If the entire enterprise is consolidated and operated as an integrated unit so that there is not actual and real separation between the retail selling of goods or services and the other activities of the business, the entire business will be considered as one single establishment for purposes of the exemption. On the other hand, the retail portion of the business will be considered a separate establishment for the purpose of the exemption if (1) it is physically separated from the other activities (physical separation may be effected by a partition or a gate, or a separate counter may be sufficient under the circumstances); (2) it is functionally operated as a separate unit having separate records, separate bookkeeping, and separate employees; and (3) there is no interchange of employees between the units. The requirement that there be no interchange of employees between the units does not mean that an employee of one unit may not occasionally, when circumstances require it, render some help in the other units or that one employee of one unit may not be transferred to work in the other unit. The requirement has reference to the indiscriminate use of the employee in both units without regard to the segregated functions of such units. It should also be noted that where the problem is not one of segregation on the same premises and the situation is clear that the employer operates two or more establishments possessing all the characteristics of separate and distinct physical places of business such separate and distinct establishments will not be considered as one establishment simply because there is interchange of employees between them. With reference to whether or not employees serving two or more establishments will be exempt, however, see § 779.4. See also § 779.27 on combination of exemptions.

§ 779.4 *"Employed by"*—(a) *Meaning and scope of "employed by."* It will be observed that while the retail or service establishment exemption as contained in section 13 (a) (2) as originally enacted in 1938, exempted any employee "engaged in" any such establishment, the 1949 amendments to that section as contained in section 13 (a) (2), (3) and (4), exempt any employee "employed by" any establishment described in those exemptions. Thus, where it is found that any of those exemptions apply to an establishment owned or operated by the employer all the employees "employed by" that establishment of the employer will be exempt from the minimum wage and overtime provisions of the act without regard to whether such employees perform their activities inside or outside the establishment. The change made by the amendments makes it clear that such employees as collectors, repair and service men, outside salesmen, merchandise buyers, consumer survey and promotion workers, and delivery men employed by an exempt retail or service establishment or an exempt laundry and cleaning establishment are exempt from the minimum wage and overtime provisions of the act although they may perform the work of the establishment away from the premises.[14]

It should be equally clear, however, that the fact that the employer carries an employee on the payroll of an exempt establishment does not automatically extend the exemption to that employee.[15] In order to be exempt an employee must actually be "employed by" the exempt establishment. This means that whether the employee is performing his duties inside or outside the establishment, he must be employed in the work of the exempt establishment itself in activities within the scope of its business in order to meet the requirement of actual employment "by" the establishment. For example, an employee of an exempt retail establishment will be exempt even though he is exclusively engaged in making the wholesale sales of the establishment.

Since the exemptions by their terms apply to the employees "employed by" the exempt establishment, it follows that those exemptions will not extend to other employees who may actually be working in the establishment but who are not employed "by" the exempt establishment. Thus, traveling auditors, manufacturers' demonstrators, display-window arrangers, sales instructors, etc., who are not employed "by" an exempt establishment in which they work will not be exempt merely because they happen to be working in such an exempt establishment. For example, if a manufacturer sends one of his employees to demonstrate to the public in a customer's exempt retail establishment the products which he has manufactured, the employee will not be considered exempt under section 13 (a) (2) since he is not employed "by" that establishment. The same would be true of an employee of the central offices of a chain-store organization who performs work for the central organization on the premises of an exempt retail outlet of the chain.

(b) *Employees of employers operating multi-unit enterprises.* (1) As previously explained, an "establishment" within the meaning of section 13 (a) (2), (3) and (4) is a distinct physical place of business and is not synonymous with a "business" or "enterprise." Accordingly, where the employer's business operations are conducted in more than one establishment, as in the various units of a chain-store system or where branch establishments are operated in conjunction with a main store, the employer is entitled to exemption under section 13 (a) (2), (3) or (4) for those of his employees in such enterprise, and those only, who are "employed by" an establishment which qualifies for exemption under the statutory tests.[16]

(2) Under this test, employees in the warehouses and central offices of chain-store systems are not exempt. Typically, chain-store organizations are merchandising institutions of a hybrid retail-wholesale nature, whose wholesale functions are performed through their warehouses and central offices and similar establishments which distribute to or serve the various retail outlets. Such central establishments clearly cannot qualify as exempt establishments.[17] The employees working there are not "employed by" any single exempt establishment of the enterprise; they are, rather, "employed by" an organization of a number of such establishments.[18] Their status obviously differs from that of employees of an exempt retail or service establishment working in a warehouse operated by and servicing such establishment exclusively, who are exempt as employees "employed by" the exempt establishment regardless of whether or not the warehouse operation is conducted in the same building as the selling or servicing activities.[19]

(3) Clearly, therefore, where employees of a business organization work in a separate establishment devoted to central office and warehousing functions for a number of exempt establishments of such organization, they are not exempt as employees "employed by" any such exempt establishment.

The question has arisen whether there is a distinction for purposes of the exemptions between this situation and one in which employees working in an exempt establishment and employed for the purpose of performing activities which are part of the ordinary business operations of that exempt establishment, also perform similar functions for a few exempt branches of such establishment which are located in the same local community, which represent a minor part of the employer's business, and which are organizationally operated by the employer as subdivisions of the main establishment in which such employees work. It is not clear whether the courts would draw such a distinction. Pending judicial clarification of the status of such employees, the following enforcement policy will be followed: They will not be treated like employees performing central functions of a chain-store organization but, rather, will be treated as "employed by" the main establishment in which they work and will be regarded as exempt, provided: (i) Both the main establishment and all the branches to which their work also relates qualify for exemption under section 13 (a) (2), (3), or (4); (ii) the main establishment and its branches are, organizationally, operated in the same local community as integral parts of a single store; (iii) the employer does not operate more than 4 such branches of his main establishment and (iv) the annual dollar volume of

[14] H. Mgrs, St., 1949, p. 25; Statement of Representative Lucas, 95 Cong. Rec., p. 11003.

[15] "Employ" as defined in section 3 (g) of the act includes "to suffer or permit to work."

[16] See § 779.3 (b).

[17] Phillips Co. v. Walling, 324 U. S. 490.

[18] H. Mgrs. St., 1949, p. 25.

sales of goods and services made by the main establishment is greater than the aggregate annual dollar volume of sales of goods and services made by all the branch establishments.

(4) An employee who is employed by an establishment which qualifies as an exempt establishment under section 13 (a) (2) or (3) or (4) is exempt from the minimum wage and overtime requirements of the act even though his employer also operates one or more establishments which are not exempt. On the other hand, it may be stated as a general rule that if such an employer employs an employee in the work of both exempt and nonexempt establishments during the same workweek, the employee is not "employed by" an exempt establishment during such workweek. It is recognized, however, that there are situations where an employee of an employer, in order to discharge adequately the requirements of his job for the exempt establishment in which he works, may incidentally or sporadically be called upon to perform some work for the benefit of another establishment. For example, an elevator operator in a retail store may in the perfomance of his regular duties for the store incidentally carry personnel who have a central office or warehouse function. Similarly, a maintenance man in such store may incidentally perform work which is for the benefit of the central office or warehouse activities. Also, a sales clerk in a department of a retail store may sporadically be called upon to release some of the stock on hand in the department for the use of another store. Employees performing an insignificant amount of such incidental work or performing work sporadically for the benefit of another establishment whether or not such other establishment is owned by the employer of the employee performing such activities, are, nevertheless, "employed by" their employer's establishment within the meaning of the exemptions and will be exempt if such establishment meets the specific tests of the appropriate exemption.

THE 13 (a) (2) RETAIL OR SERVICE ESTABLISHMENT EXEMPTION

§ 779.5 *General.* Under section 13 (a) (2)[19] of the act, a retail or service establishment may be one selling goods exclusively or selling services exclusively or it may be a combination of both. So long as such an establishment is a retail or service establishment meeting the requirements of the exemption, it will be an exempt establishment.

§ 779.6 *The requirements of the exemption summarized.* Under section 13 (a) (2) employees "employed by"[20] an "establishment"[21] are exempt from the minimum wage and overtime requirements of the act if the establishment qualifies as an exempt retail or service establishment by meeting all of the following requirements:

(a) The establishment must be engaged in making sales of goods or of services or of both.

(b) The establishment's total annual dollar volume of sales of such goods (if it sells goods only) or of such services (if it sells services only) or of both (if it sells both goods and services) must meet the following tests:

(1) At least 75 percent must be from sales of goods or services which are both (i) recognized as retail sales or services in the particular industry and (ii) not for resale.

(2) More than 50 percent must be from sales of goods or services which are made within the State in which the establishment is located.

Under these tests an establishment selling goods and services at retail may, without losing the exemption, derive up to 25 percent of its total annual dollar volume from a combination of sources such as: 5 percent from the sale of goods for resale, 5 percent from the sale of services for resale, 5 percent from sales of goods which are not recognized as retail sales in the particular industry and 10 percent from sales or services which are not recognized as retail services in the particular industry, or any other combination provided the total does not exceed 25 percent.

§ 779.7 *Making sales of goods or services.* In order for an establishment to be considered for qualification for the 13 (a) (2) exemption, it must first be proved that the establishment is engaged in making sales of goods or services (or both). If the establishment is not so engaged the statutory tests cannot be applied to it and its employees are not within the exemption. The term "goods" is defined in section 3 (i) of the act but the act does not define the term "services." The term "services," therefore, must be given a meaning consistent with its usage in ordinary speech, with the context in which it appears and with the legislative history of the exemption as it explains the scope, the purposes and the objectives of the exemption. Although in a very general sense every business might be said to perform a service it is clear from the context and the legislative history that all business establishments are not making sales of "services" of the type contemplated by the exemption. The exemption has reference only to sales of "services" of the type performed by establishments which are traditionally recognized as local retail service establishments such as the restaurant, hotel, barber shop, repair shop, etc.[22] The legislative history of the exemption shows the intention of Congress to exclude from its scope establishments such as those of banks, telephone companies, credit companies and other establishments of that type. These establishments and others which are not engaged in making sales of goods or "services" of the type to which the exemption refers, such as, for example, those of personal finance companies and building construction companies, are not service establishments within the meaning of the exemption.

§ 779.8 *"Recognized in the particular industry"*—(a) *Introduction.* In the application of the exemption, it must be determined whether the sales or services of an establishment are recognized as retail sales or services in the particular industry. There is the duty under this requirement for the employer to show positively that his sales of goods or services are recognized as retail sales of goods or services in the particular industry. A showing that sales of goods or services are not wholesale does not necessarily prove that such sales or services are recognized in the particular industry as retail. In order to answer the question adequately as to whether a sale or service is recognized as retail in the particular industry within the meaning of the exemption, it is necessary to inquire into the purposes of the exemption and what it is intended to achieve.[23] It is also necessary to inquire into what is meant by the terms "recognized" and "in the particular industry," and into the functions of the Administrator and the courts in the problem of "recognizing."

(b) *"Recognized" in the industry.* In view of the fact that the 13 (a) (2) exemption is intended to exempt establishments which are traditionaly recognized as retail or service establishments,[24] the word "recognized" for purposes of the exemption means "known." In other words, in order for a sale or service to be recognized as a retail sale or service, such sale or service must actually be "known" to be retail in the industry.[25]

(c) *In the "particular industry".* In order to determine whether a sale or service is recognized as a retail sale or service in the "particular industry" it is necessary to identify the "particular" industry to which the sale or service belongs. Some situations are clear and present no difficulty. The sale of coal, for example, belongs to the coal industry and the sale of ice belongs to the ice industry. In other situations, a sale or service is not so easily earmarked and a wide area of overlapping exists. Household appliances are sold by public utilities as well as by department stores and by stores specializing in the sale of such goods; and tires are sold by manufacturers' outlets, by independent tire dealers and by other types of outlets. In these cases, a fair determination as to whether a sale or service is recognized as retail in the "particular" industry may be made by giving to the term "industry" its broad statutory definition as a "group of industries" and thus including all industries wherein a significant quantity of the particular product or service is

[19] The statutory provision is set out in § 779.1.

[20] See § 779.4 for the meaning of "employed by."

[21] See § 779.3 discussing the "establishment" basis for the exemption.

[22] Fleming v. A. B. Kirschbaum Co., 124 F. 2d 567 (C. A. 3), affirmed 316 U. S. 517; Sun Publishing Co. v. Walling, 140 F. 2d 445 (C. A. 6), certiorari denied 322 U. S. 728; Walling v. Public Quick Freezing & Cold Storage Co., 62 F. Supp. 924 (S. D. Fla.); H. Mgrs. St., 1949, pp. 24–26; Sen. St., 95 Cong. Rec., p. 14877; statements of Senator Holland, 95 Cong. Rec., pp. 12502, 12505, 12506.

[23] This phase of the problem is discussed in § 779.9.

[24] See § 779.9.

[25] Statements of Senator Holland, 95 Cong. Rec., pp. 12502, 12510. And see definition of the word "recognized" in Webster's International Dictionary.

sold.[20] Also in order to determine properly whether a sale or service is recognized as retail in the particular industry the term "industry" should be understood to mean the whole industry and not a branch thereof. For example, in determining whether a sale of lumber or a sale of coal is a retail sale it is the recognition the sale of lumber or of coal occupies in the lumber industry or coal industry generally which decides its character rather than the recognition such sale occupies in the retail branches of those industries.

(d) *Recognition "in" the particular industry.* The express terms of the statutory provision require the "recognition" to be "in" the industry and not "by" the industry. Thus, the basis for the determination as to what is recognized as retail "in the particular industry" is wider and greater than the views of an employer in a trade or business, or an association of such employers. The legislative history is clear that it was not the intent of this provision to delegate to employers in any particular industry the power to exempt themselves from the requirements of the act It was emphasized in the debates in Congress that while the views of an industry are significant and material in determining what is recognized as a retail sale in a particular industry, the determination is not dependent on that fact alone.[21] Such a determination must take into consideration the well-settled habits of business, traditional understanding, and common knowledge. These involve the understanding and knowledge of the purchaser as well as the seller, the wholesaler as well as the retailer, the employee as well as the employer, and private and governmental research and statistical organizations. The understanding of all those and others who have knowledge of recognized classifications in an industry, would all be relevant in the determination of the question.

(e) *Functions of the Administrator and the courts.* It is necessary for the Administrator in the performance of his duties under the act to determine in the first instance whether a sale or service is recognized as a retail sale or service in a particular industry.[22] In the exceptional case where the determination cannot be made on the basis of common knowledge or readily accessible information, the Administrator will gather the information needed for the purpose of making such determinations. The responsibility for making final decisions, of course, rests with the courts. An employer disagreeing with the determinations made by the Administrator and claiming exemption has the burden of proving in a court proceeding that his sales or services are recognized as retail sales or services in the particular industry and that his establishment qualifies for the exemption claimed by him.

(f) *Sources of information.* In determining whether a sale or service is recognized as a retail sale or service in a particular industry, there are already available to the Administrator a number of sources of information to aid him in arriving at a conclusion. Those sources are: (1) The legislative history of the exemption as originally enacted in 1938 and the legislative history of the 1949 amendments to the exemption; (2) the decisions of the courts during the past eleven years; and (3) the Administrator's experience during the past eleven years in interpreting and administering the exemption. These sources of information, viewed in the light of the 1949 amendments to the exemption, enable the Administrator, at this time, to lay down certain standards and criteria for determining generally and in some cases specifically what sales or services are recognized as retail sales or services in particular industries. These standards and criteria are discussed in § 779.9.

§ 779.9 *Sales and services recognized as retail*—(a) *Introduction.* The term "retail" whether it refers to the sale of goods or of services is susceptible to various interpretations. When used in a specific law it can be defined properly only in terms of the purposes and objectives and scope of that law. Thus what is a retail sale for purposes of a sales tax law is not necessarily a retail sale for purposes of the retail or service establishment exemption. In enacting the 13 (a) (2) exemption, Congress had before it the specific object of exempting from the minimum wage and overtime requirements of the act employees employed by the traditional local retail or service establishment subject to the conditions specified in the exemption. On the basis of this background for the exemption, the legislative history clearly shows that the sales or services of certain types of establishments are not recognized as retail sales or services and that the sales or services of certain other types of establishments, those which Congress intended to exempt, may be recognized as retail sales or services within the meaning of the exemption. Therefore, where an establishment is not

---

[20] The term "industry" is defined in section 3 (h) of the act to mean "a trade, business, industry, or branch thereof, or group of industries, in which individuals are gainfully employed."

[21] In answer to a question by Senator Aiken as to who does the recognizing, Senator Holland said: "The Administrator, the courts, the merchant, his employees, the enforcement officer, and everyone else. Here is the standard set up, and for the determination of the standard everybody who is concerned has a right to discover what his standard in the particular industry is. An employee who has rights under the bill, if he sees something happening in the name of retail business which he knows is not retail business, has a perfect right to assert himself, and when he asserts himself, he shall not have his complaint fall on deaf ears. If he can show that a practice which is being sought to be shown as a retail practice is not so at all, of course it will not be so held." 95 Cong. Rec., p. 12510. Senator Holland further said: "There could be various criteria which could be applied, one of which, of course, would be the conclusion of the trade association in the particular industry. But that is only one criterion. Others would apply. The well-settled habits of business must be applied. They will not necessarily be the same in all trades or businesses." 95 Cong. Rec., p. 12510. In a colloquy between Senators Douglas and Holland the following remarks were made: Senator Douglas: "I understand that the interpretation which would be made would be that given to a 'retail sale' by a trade association." In reply Senator Holland said: "That is one criterion, of course; but I do not believe the Senator from Illinois, and certainly not the Senator from Florida, would wish to delegate full authority in the matter to a trade association or any other interested group." 95 Cong. Rec., p. 12501. In further explanation Senator Holland said: "The salesman in the hardware store knows full well whether a sale he is making is a retail sale or not. * * * The same is true of employees in grocery stores, clothing stores, drygoods stores, furniture stores, and so forth. Moreover, it should be remembered that any employer who asserts that his establishment is exempt must assume the burden of proving that at least 75 percent of his sales are recognized in his industry as retail. This is not a task which the Administrator has to assume." 95 Cong. Rec., p. 12502.

[22] In commenting on the question as to the difficulty involved in determining whether a sale or service is recognized as retail in the particular industry, Representative Lucas said: "The other charge against my amendment has been that it would make the exemption difficult, if not impossible, to apply, because years of litigation would be required to ascertain what is recognized as a retail sale in various industries. This charge is completely baseless. The Administrator, through his 11 years of administration of the existing law, has come to know quite well what sales and services are recognized as retail in each particular industry. Moreover, each industry knows also what such sales and services are. Only in the rare instance where the Administrator and industry disagreed on this matter would a court test be required. In any event, no enforcement burden is placed upon the Administrator. The employer claiming exemption would have the burden of proving that at least 75 percent of his sales are recognized as retail in the industry. The problem is the employer's and not the Administrator's. The latter, therefore, is in no position to complain about the difficulty of establishing whether particular sales are recognized in the industry as retail." 95 Cong. Rec., p. 11116.

In answer to a question by Senator Douglas as to who is to define what is recognized as retail sales or services in the particular industry, Senator Holland replied: "Who but the Administrator? If the administrative or interpretative ruling is not regarded as sound by the individual person concerned, then he can appeal; and then the matter will be ruled on by the courts." 95 Cong. Rec., p. 12501. Commenting further, Senator Holland said: "It seems to me under the law as suggested by the amendment a clear test would be one discoverable in any industry by honest search, and that the Administrator would be given plenty of authority to discover what is the rule, what is the meaning of the term in the particular industry, and to give effect to it. If he should find a clouded situation, he always has access to the courts." 95 Cong. Rec., p. 12502. In answer to a question by Senator Aiken as to whether the industry recognition test would not "throw the situation wide open for each industry to determine whether its sales shall be considered retail or wholesale," Senator Holland replied as follows: "It is not the judgment of the sponsors of the amendment that that would be the result. On the contrary, it is our belief that the Administrator would have a function to perform, and if he goes astray, in the judgment of individuals who are affected, he could be appealed from, the case could be taken to court. It is our judgment that we are simply using words and terms in the way they are customarily understood, just as was done on the passage of the original act, except that we are going far enough to leave something definitive by this amendment." 95 Cong. Rec., p. 12510.

of the type intended to be exempt, its sales and services are not recognized as retail sales or services within the meaning of the exemption and for that reason the establishment will not meet the tests of the exemption.

(b) *Legislative background; types of exempt and non-exempt establishments.* In amending the retail or service establishment exemption as contained in section 13 (a) (2) of the act of 1938, the legislative history of the amendments indicates that while it was the intention of the sponsors of the amendments to clarify what is meant by a retail sale or service, it was not their intention to expand the scope of the exemption as originally enacted in 1938 with reference to the type of establishment intended to be exempt. The declared purpose of the amendments was to confirm and to clarify that exemption.[29]

The sponsors of the amendments repeated what was said in 1938, that the exemption is intended to apply to establishments which are traditionally regarded as retail or service establishments. These establishments are the various local retail businesses selling goods or services at retail. Typical of such establishments as viewed by the sponsors of the amendments are: grocery stores, hardware stores, clothing stores, dry goods stores, stationery stores, farm implement dealers, automobile dealers, coal dealers, paint stores, furniture stores, restaurants, hotels, repair garages, watch repair establishments, beauty parlors, barber shops, hospitals, farm equipment repair shops, valet shops, household refrigerator repair shops, typewriter repair shops, exterminator service companies, and other such local establishments.[30] In contrast with this enumeration of the type of establishment intended to be exempt, the sponsors of the amendments also named examples of the type of establishment not intended to be exempt. The examples include banks, insurance companies, building and loan associations, credit companies, newspapers, telephone companies, gas and electric utility companies, telegraph companies, chain store warehouses and central offices, establishments engaged in the sale and servicing of manufacturing machinery and manufacturing equipment used in the production of goods, and firms engaged in the renting and maintenance of loft buildings or office buildings.[31] The reason given by the sponsors of the amendments for excluding these types of establishments from the scope of the exemption is "because there is no concept of retail selling or servicing in these industries."[32] Thus the legislative history of the amendments indicates that a retail sale or service for purposes of the exemption is one to which the retail concept applies and on this basis industries were classified by the sponsors of the amendments into those which may be engaged in retail selling or servicing and those whose sales and services are not recognized as retail sales or services.

(c) *The "retail concept," its applicability.* It will be observed that the sponsors of the amendment, in classifying industries on the basis of the applicability of the retail concept to their selling or servicing, did so on the basis of common knowledge as to what is recognized and what is not recognized as retail selling or servicing in the light of the objectives and purposes of the exemption as to the type of establishment it is intended to exempt. Thus, the dividing line between sales and services to which the retail concept is applicable and those to which it is not applicable is the general and common understanding of people of what constitutes a retail sale or service in the traditional sense. For example, people do not ordinarily think of the transactions of an insurance company as retail transactions nor do they think of an electric power company selling electrical energy to individuals as retail. The idea is alien to such transactions. But people ordinarily do think of the sales of a grocery store or of a filling station or of a restaurant as retail sales or services. The retail concept, therefore, represents the common understanding of people generally as to what is meant by a retail sale or service or by a retail or service establishment. Only those sales or services to which the retail concept applies may be recognized as retail sales of goods or services for purposes of the exemption. Where there is no concept of retail selling or servicing the establishment does not qualify for the exemption.

Ordinarily a determination as to whether a particular establishment is one whose sales or services can be recognized as retail is not difficult. There are certain well-defined characteristics which distinguish an establishment to whose sales or services the retail concept applies from an establishment to whose sales and services such concept does not apply. The following discussion is intended to indicate the principal attributes that commonly and generally characterize the two types of establishments.

(d) *Characteristics of a retail or service establishment.* Typically a retail or service establishment is one which sells goods or services to the general public. It serves the everyday needs of the community in which it is located. The retail or service establishment performs a function in the business organization of the nation which is at the very end of the stream of distribution, disposing in small quantities of the products and skills of such organization and does not take part in the manufacturing processes.[33] Such an establishment sells to the general public its food and drink. It sells to such public its clothing and its furniture, its automobiles, its radios and refrigerators, its coal and its lumber, and other goods, and performs services on such goods when necessary. A retail service establishment provides the general public its repair services and other services for the comfort and convenience of such public in the course of its daily living; a garage repairs its automobiles and a tailor shop mends its clothing.

The location of the retail or service establishment, whether in an industrial plant, an office building, a railroad depot, or a Government park, etc., will make no difference in the application of the exemption and such an establishment will be exempt if it meets the tests of the exemption.[34] Generally, however, an establishment, wherever located, will not be considered a retail or service establishment within the meaning of section 13 (a) (2), if it is not ordinarily available to the general consuming public. For example, some manufacturing plants and businesses maintain departments which merely facilitate or make possible the continued operation of the principal business of the companies which maintain them. A transportation company may maintain a service department to service its own equipment; [35] isolated lumber camps or mines may maintain cook houses and bunk houses to feed

[29] Representative Lucas made the following two statements on the floor of the House. He said: "The amendment thus has the effect of confirming the exemption for the various local neighborhood businesses whom it was the original purpose of the existing law to exempt. Included among such businesses are the grocery stores, the hardware stores, the clothing stores, the dry goods stores, restaurants, hotels, stationery stores, farm implement dealers, automobile dealers, paint stores, furniture stores, and lumber dealers," 95 Cong. Rec., p. 11004; also, "My amendment clears up that doubt by exempting the establishments which are traditionally regarded as retail. It is only in the sense that it clarifies such doubt that my amendment can be regarded as expanding the present exemption. But in a real sense it is not expanding the exemption at all but simply confirming it for those establishments which the Congress always intended to exempt. The contrary view must assume that in granting the retail and service establishment exemption, Congress intended to reject what is traditionally recognized as a retail sale or service in an industry and to adopt an arbitrary concept of what is retailing or servicing." 95 Cong. Rec., p. 11116. Senator Holland repeated those two statements in substantially the same form on the floor of the Senate. See 95 Cong. Rec., p. 12502 and p. 12506.

The statement of the Managers on the Part of the House, H. Rept. 1453, p. 24, stated: "The amendment (sec. 13 (a) (2)), agreed to in conference clarifies the existing exemption by defining the term retail or service establishment and stating the conditions under which the exemption shall apply. This clarification is needed in order to obviate the sweeping ruling of the Administrator and the courts that no sale of goods or services for business use is retail. See Roland Electrical Co. v. Walling, (326 U. S. 657); McComb v. Diebert, ((E. D. Pa. 1949) 16 Labor Cases Par. 64,982); McComb v. Factory Stores (81 F. Supp. 403 (N. D. Ohio 1948))."

[30] Statement of Representative Lucas, 95 Cong. Rec., p. 11004; statement of Senator Holland, 95 Cong. Rec., pp. 12502, 12506.

[31] See questions and answers by Senator Holland, 95 Cong. Rec., pp. 12505–12506; H. Mgrs. St., 1949, pp. 25–26; Sen. St., 95 Cong. Rec., p. 14877.

[32] See H. Mgrs. St., 1949, p. 26; Statements of Senator Holland, 95 Cong. Rec., pp. 12505–12506. See also 95 Cong. Rec., p. 12503, where Senator Holland stated that the reason for a separate exemption for laundry and cleaning establishments is that, "There is no clear concept in the laundry and cleaning industry of retail services."

[33] See, however, the discussion of section 13 (a) (4) in § 779.18.

[34] See statement of Senator Taft, 95 Cong. Rec., p. 14880 and H. Mgrs. St., 1949, p. 25.

[35] Cf. Boutell v. Walling, 327 U. S. 463.

and house their employees.[36] In those cases the employer operates an adjunct which is directly related to the principal business and the furnishing of the facilities is an integral and an indispensable part of the principal operations. Failure to provide such facilities would make continued operations virtually impossible. In such situations the employer does not satisfy the wants of the employees as part of the general consuming public but in order to enable him to carry on his business. Such establishments are not retail or service establishments within the meaning of the exemption.

An establishment, however, does not have to be actually frequented by the general public in the sense that the public must actually visit it and make purchases of goods or services on the premises in order to be considered as available and open to the general public. A refrigerator repair service shop, for example, is available and open to the general public even if it receives all its orders on the telephone and performs all of its repair services on the premises of its customers. Similarly an establishment will be considered available and open to the general public even if it receives its orders by mail. So also, a factory cafeteria or snack bar may qualify for the 13 (a) (2) exemption if it meets the tests of the exemption although it is not frequented by the public generally.[37]

(e) *Examples of establishments which are not retail or service establishments.* In contrast with the general description of "retail or service establishments" given above, there are establishments which carry on their activities as a part of the process of the production of goods, and establishments which have a specialized function to perform in the industrial, mercantile or financial organization of the nation; such establishments, typically, provide financial, commercial, and industrial enterprises with specialized goods or services which the general consuming public does not ordinarily have occasion to use. These establishments are not engaged in activities which are recognized as retail within the meaning of the exemption even though they may also sometimes sell goods or render services to the general consuming public while performing such function. Such activities as they perform are not recognized as retail as that term is traditionally and commonly understood. The concept of retail selling or servicing is alien to the types of activities performed by these establishments.[38] The following examples will illustrate that type of activity:

(1) An establishment sells or services manufacturing machinery and manufacturing equipment used in the production of goods. The activities of such an establishment form a link in the chain of the manufacturing process and are not recognized as retail sales or services in the industry.

(2) An electric power company may serve the general consuming public. It is not a retail establishment because the production, generation and distribution of electricity have never been recognized as retail activities.

(3) A bank also may serve the general consuming public but it is not a retail or service establishment because its primary function consists of its being the essential part of the money and credit organization of the country.

(4) A tobacco auction warehouse is not a retail or service establishment because the type of activities conducted in such establishments are in the midst of transactions between the grower and the manufacturer, dealer, and exporter.

(5) Scrap iron dealers supply the raw materials to processors and manufacturers for the production of goods. Their function is an essential part of the productive process and their establishments are not regarded as retail or service establishments.

(6) Advertising agencies provide industrial, commercial and financial organizations with specialized services which the general consuming public does not ordinarily have occasion to use. Such establishments have never been recognized as making sales of goods or services at retail.

§ 779.10 *Lists of the two types of establishments.* There are types of establishments in industries where it is not readily apparent whether the retail concept applies and whether or not the exemption is intended to apply. It is, therefore, not possible to give complete lists of the types of establishments whose sales and services are not recognized as retail or of the types of establishments whose sales and services may be recognized as retail. It is possible, however, to give partial lists of both types of establishments. These lists are as follows:

(a) *Types of establishments whose sales or services may be recognized as retail:*

Antique shops.
Auto courts.
Automobile dealers' establishments.
Automobile laundries.
Automobile repair shops.
Barber shops.
Beauty shops.
Bicycle shops.
Billiard parlors.
Book stores.
Bowling alleys.
Butcher shops.
Cafeterias.
Cemeteries.
China, glassware stores.
Cigar stores.
Clothing stores.
Coal yards.
Confectionery stores.
Crematories.
Dance halls.
Delicatessen stores.
Department stores.
Drapery stores.
Dress-suit rental establishments.
Drug stores.
Dry goods stores.
Embalming establishments.
Farm implement dealers.
Filling stations.
Floor coverings stores.
Florists.
Funeral homes.
Fur repair and storage shops.
Fur stores.
Furniture stores.
Gift, novelty and souvenir shops.
Grocery stores.
Hardware stores.
Hosiery shops.
Hotels.
Household appliances stores.
Household furniture storage and moving establishments.
Household refrigerator service and repair shops.
Infants' wear shops.
Jewelry stores.
Liquor stores.
Luggage stores.
Lumber yards.
Masseur establishments.
Millinery shops.
Musical instrument stores and repair shops.
Newsstands.
Paint stores.
Public parking lots.
Photographic supply and camera shops.
Piano tuning establishments.
Public baths.
Public garages.
Radio and television stores and repair shops.
Recreational camps.
Restaurants.
Roadside diners.
Scalp-treatment establishments.
Shoe repair shops.
Shoeshine parlors.
Sporting goods stores.
Stationery stores.
Theatres.
Tourist houses.
Trailer camps.
Undertakers.
Valet shops.
Variety shops.
Watch, clock and jewelry repair establishments.

(b) *Types of establishments whose sales or services are not recognized as retail:*

Accounting firms.
Adjustment and credit bureaus and collection agencies.[39]
Advertising agencies including billboard advertising.
Aircraft and aeronautical equipment; establishments engaged in the business of dealing in.
Armored car companies.
Art; commercial art firms.
Auto-wreckers' and junk dealers' establishments.[40]
Automatic vending machinery; establishments engaged in the business of dealing in.
Bakery equipment; establishments engaged in the business of dealing in.
Banks (both commercial and savings).
Barber and beauty parlor equipment; establishments engaged in the business of dealing in.
Blacksmiths; industrial.
Blue printing and photostating establishments.
Booking agencies for actors and concert artists.

[36] Womack v. Consolidated Timber Co., 132 F 2d 101 (C. A. 9); Hanson v. Lagerstrom, 133 F. 2d 120 (C. A. 8); Cf. Brogan v. National Surety Co., 246 U. S. 257.

[37] Since employees of factory cafeterias and snack bars would not ordinarily be engaged in the production of goods for commerce within the meaning of the act (see Part 776 of this chapter, § 776.18 (b), the question of exemption would generally arise only with respect to employees engaged in ordering or receiving supplies from outside the State or in other forms of interstate commerce. See, in this connection, § 779.2 and § 776.10 in Part 776 of this chapter.

[38] Statement of Senator Holland, 95 Cong. Rec., p. 12505; H. Mgrs. St., 1949, pp. 25, 26; Sen. St., 95 Cong. Rec., p. 14877; statement of Senator Taft, 95 Cong. Rec., p. 14680.

[39] Mill v. United States Credit Bureau, 1 W. H. Cases 878, 5 Labor Cases par. 60992 (S. D. Calif.).

[40] Bracey v. Luray, 138 F. 2d 8 (C. A. 4).

Bottling and bottling equipment and canning machinery; establishments engaged in the business of dealing in.
Brokers, custom house; freight brokers; insurance brokers, stock or commodity brokers.
Building and loan associations.
Building contractors.
Burglar alarms; establishments engaged in furnishing, installing and repairing for commercial establishments.[41]
Butchers' equipment; establishments engaged in the business of dealing in.
Chambers of Commerce.
Chemical equipment; establishments engaged in the business of dealing in.
Credit rating agencies.
Dental laboratories.
Dental laboratory supplies; establishments engaged in the business of dealing in.
Dentists supply and equipment establishments.
Drydock companies.
Dye houses, commercial.[42]
Duplicating, addressing, mailing and mail listing establishments.[43]
Electric and gas utilities.[44]
Electric signs; establishments engaged in making.
Elevators; establishments engaged in repairing.[45]
Employment agencies.[46]
Engineering firms.
Factors.
Filling stations equipment; establishments engaged in the business of dealing in.
Geological surveys; firms engaged in making.
Hospital equipment (such as operating instruments, X-ray machines, operating tables, etc.) establishments engaged in the business of dealing in.
Insurance; life, fire, casualty, etc.—mutual, stock and fraternal benefit, including insurance brokers, agents, and claims, adjustment offices.
Investment counselling firms.
Jewelers' equipment; establishments engaged in the business of dealing in.
Job efficiency checking and rating; establishments engaged in the business of supplying.
Labor unions.
Laboratory equipment; establishments engaged in the business of dealing in.
Laundry; establishments engaged in the business of dealing in commercial laundry equipment.
Lawyers' offices.
Legal concerns engaged in compiling and distributing information regarding legal developments.
Loft buildings or office buildings; concerns engaged in renting and maintenance of.[47]
Machinery and equipment, including tools—establishments engaged in selling or servicing of construction, mining, manufacturing, and industrial machinery, equipment and tools.[48]
Messenger; firms engaged in furnishing commercial messenger service.[49]
Oil-well drilling; companies engaged in contract oil-well drilling.
Oil-well surveying firms.[50]
Packing companies engaged in slaughtering livestock.[51]
Personal loan companies.
Pharmacists' supplies; establishments engaged in the business of dealing in.
Plumbers' equipment; establishments engaged in the business of dealing in.
Printers' and lithographers' supplies; establishments engaged in the business of dealing in.
Printing and binding establishments.[52]
Quarries.[53]
Radio and Television broadcasting stations.
Real estate companies.
Security dealers.
Ship equipment, commercial; establishments engaged in the business of dealing in.
Sign paint shops.
Soda fountain equipment; establishments engaged in the business of dealing in.
Statistical reporting, business and financial data; establishments engaged in furnishing.
Store equipment; establishments engaged in the business of dealing in.
Telephone companies.[54]
Title and abstract companies.
Tobacco auction warehouses.[55]
Toll bridge companies.
Trade associations.
Transportation equipment, commercial; establishments engaged in the business of dealing in.
Trust companies.
Undertakers' supplies; establishments engaged in the business of dealing in.
Warehouse companies; commercial or industrial.[56]
Warehouse equipment and supplies; establishments engaged in the business of dealing in.
Watchmen, guards and detectives for industries; establishments engaged in supplying.[57]
Water supply companies.[58]
Window displays; establishments engaged in the business of dealing in.

§ 779.11 *Retail and wholesale distinguished.* A wholesale sale is, of course, not recognized as a retail sale within the meaning of the 13 (a) (2) exemption. If an establishment derives more than 25 percent of its annual dollar volume from sales made at wholesale, it will clearly not qualify for the retail and service establishment exemption. The distinction between a retail sale and a wholesale sale is one of fact. Typically, retail sales are made to the general consuming public. The sales are numerous and involve small quantities of goods or services. Wholesale establishments usually exclude the general consuming public as a matter of established business policy and confine their sales to other wholesalers, retailers, and large scale industrial or business purchasers in quantities greater than is normally sold to the general consuming public at the retail establishment. What constitutes a small quantity of goods depends, of course, upon the facts in the particular case and the quantity will vary with different commodities and different trades and industries. Thus, a different quantity would be characteristic of retail sales of canned tomato juice, bed sheets, furniture, coal, etc. The quantity test is a well-recognized business concept. There are reasonably definite limits as to the quantity of a particular commodity which the general consuming public regularly purchases at any given time at retail and businessmen are aware of these buying habits. These buying habits set the standard for the quantity of goods which is recognized in an industry as the subject of a retail sale. Quantities which are materially in excess of such a standard are generally regarded as wholesale and not retail quantities.

The sale of goods or services in a quantity approximating the quantity involved in a normal wholesale transaction and as to which a special discount from the normal retail price is given, is generally regarded as a wholesale sale in most industries. Whether the sale of such a quantity must always involve a discount in order to be considered a wholesale sale depends upon industry practice. If the practice in a particular industry is such that a discount from the normal retail price is not regarded in the industry as significant in determining whether the sale of a certain quantity is a wholesale sale, then the question of whether the sale of such a quantity will be considered a wholesale sale would be determined without reference to the price. In some industries, the sale of a small quantity at a discount may also be recognized as a wholesale sale, in which case it will be so treated for purposes of the exemption.

In some cases, a purchaser contracts for the purchase of a large quantity of goods or services to be delivered or performed in smaller quantities or jobs from time to time as the occasion requires. In other cases, also, the purchaser instead of entering into a single contract for the entire amount of goods or services, receives a series of regular deliveries or performances pursuant to a quotation, bid, estimate, or general business arrangement or understanding. In these situations, if the total quantity of goods or services which is sold is materially in excess of the total quantity of goods or services which might reasonably be purchased by a member of the general consuming public during the same period, it will be treated as a wholesale quantity for purposes of the exemp-

[41] Walling v. Thompson, 65 F. Supp. 686 (S. D. Calif.).
[42] Walling v. Kerr, 47 F. Supp. 852 (E. D. Penna.).
[43] Hanzely v. Hooven Letters, 44 N. Y. S. 2d 393 (N. Y. C. Ct. 1943).
[44] Meeker Cooperative Light & Power Assn. v. Phillips, 158 F. 2d 698 (C. A. 8); New Mexico Public Service Co. v. Engel, 145 F. 2d 636 (C. A. 10); Brown v. Minngas Co., 51 F. Supp. 362 (D. Minn.).
[45] Cf. Muldowney v. Seaberg Elevator Co., 39 F. Supp. 275 (E. D. N. Y.).
[46] Yunker v. Abbye Employment Agency, 32 N. Y. S. 2d 715 (N. Y. C. Munic. Ct. 1942).
[47] Kirschbaum v. Walling, 316 U. S. 517; statement of Senator Holland, 95 Cong. Rec., p. 12505.
[48] Roland Electrical Co. v. Walling, 326 U. S. 657; Guess v. Montague, 140 F. 2d 500 (C. A. 4); cf. Walling v. Thompson, 65 F. Supp. 686 (S. D. Calif.).
[49] Walling v. Allied Messenger Service, 47 F. Supp. 773 (S. D. N. Y.).
[50] Straughn v. Schlumberger Well Surveying Corp., 72 F. Supp. 511 (S. D. Texas).
[51] Walling v. Peoples Packing Co., 132 F. 2d 236 (C. A. 10).
[52] McComb v. Casa Baldrich, Inc., 80 F. Supp. 869 (D. P. R.).
[53] Walling v. Partee, 3 W. H. Cases 543, 7 Labor Cases, par. 61,721 (M. D. Tenn. 1943).
[54] Schmidt v. Peoples Telephone Union of Maryville, Mo., 138 F. 2d 13 (C. A. 8).
[55] Fleming v. Kenton Loose Leaf Tobacco Warehouse Co., 41 F. Supp. 255 (E. D. Ky.); Walling v. Lincoln Loose Leaf Warehouse Co., 59 F. Supp. 601 (E. D. Tenn.).
[56] Walling v. Public Quick Freezing and Cold Storage Co., 62 F. Supp. 924 (S. D. Fla.).
[57] Walling v. Sondock, 132 F. 2d 77 (C. A. 5); Walling v. Wattam, 3 W. H. Cases 726, 8 Labor Cases, par. 62,023 (W. D. Tenn. 1943); Walling v. Lum, 4 W. H. Cases, 465, 8 Labor Cases, par. 62,185 (S. D. Miss. 1944); Walling v. New Orleans Private Patrol Service, 57 F. Supp. 143 (S. D. La.); Haley v. Central Watch Service, 4 W. H. Cases 158, 8 Labor Cases, par. 62,002 (N. D. Ill. 1944).
[58] Reynolds v. Salt River Valley Water Users Assn. (143 F. 2d 863 (C. A. 9).

tion in the absence of clear evidence that under such circumstances such a quantity is recognized as a retail quantity in the particular industry.

A number of situations may arise where it will be relatively difficult to determine what is recognized as a retail sale as distinguished from a wholesale sale. Such cases present a problem which will require special study of actual facts and industry practices before a determination in each case can be made.

§ 779.12 *Effect of type of customer and type of goods or services.* In some industries the type of goods or services sold or the type of purchaser of goods or services are determining factors in whether a sale or service is recognized as retail in the particular industry. In other industries a sale or service may be recognized as retail regardless of the type of goods or services sold or the type of customer. Where a sale is recognized as retail regardless of the type of customer, its character as such will not be affected by the character of the customer, with reference to whether he is a private individual or a business concern, or by the use the purchaser makes of the purchased commodity. For example, if the sale of a single automobile to any one for any purpose is recognized as a retail sale in the industry, it will be considered as a retail sale for purposes of the exemption whether the customer be a private individual or an industrial concern or whether the automobile is used for pleasure purposes or for business purposes. If a sale of a particular quantity of coal is recognized in the industry as a retail sale, its character as such will not be affected by the fact that it is sold for the purpose of heating an office building as distinguished from a private dwelling. If the repair of a wash basin is recognized in the industry as a retail service, its character as such will not be affected by the fact that it is a wash basin in a factory building as distinguished from a wash basin in a private dwelling house.

§ 779.13 *Application of the tests of the exemption.* An establishment is, of course, not automatically exempt upon a finding that it is of the type to which the retail concept of selling or servicing is applicable; it must meet all the tests specified in the act in order to qualify for exemption. Some establishments make sales of goods or services which are recognized in the particular industry as retail sales or services and also make sales of goods or services which are not recognized as retail. Thus, for example, an establishment may be engaged in repairing household refrigerators, a service which is recognized as retail in the particular industry, and in addition it may be selling and repairing manufacturing machinery for manufacturing establishments. The retail concept does not apply to the latter activities and they are not recognized as retail in the industry as explained in § 779.9. In such case, the exemption will not apply if the annual dollar volume derived from the selling and servicing of such machinery, and from any other sales and services which are not recognized as retail sales or services, and from sales of goods or services for resale exceeds 25 percent of the establishment's total annual dollar volume of sales of goods or services. Similarly, a retail or service establishment such as a grocery store or a restaurant or a hotel may also be engaged in activities which are not recognized as retail in the particular industry such as the selling of bus tickets or railroad tickets to the general public; or a retail or service establishment such as a hotel or a department store may also be engaged in activities which are not recognized as retail in the particular industry such as the selling of insurance to the general public. The gross receipts derived by the establishment from such activities will be included in the receipts from sales of goods or services which are not recognized as retail sales of goods or services in the particular industry for the purpose of determining whether 75 percent of the establishment's annual dollar volume of sales of goods or services (or of both) is derived from sales of goods or services recognized as retail in the particular industry.

§ 779.14 *The effect of manufacturing and processing activities in a retail or service establishment*—(a) *The effect of manufacturing.* The manufacture of goods to be sold is a type of activity which is not a necessary or normal part of the selling of goods and services to customers of retail or service establishments. The activities involved in manufacturing goods for sale are normally characteristic of factory operations rather than the business operations of a retail or service establishment. It is clear from the legislative history that the section 13 (a) (2) exemption does not apply to any such manufacturing activities conducted by a retail or service establishment. Such activities, if exempt, are intended to be exempt under section 13 (a) (4).[58] Thus an employee in a retail or service establishment who engages in manufacturing goods for sale will not be exempt under section 13 (a) (2) even though the establishment by which he is employed may meet the specific tests of that exemption.

(b) *The effect of processing.* Processing incidental to retail selling of goods or services is not a manufacturing activity. For example, a grocery store may grind coffee; a drug store may prepare prescriptions; a restaurant may process food; a clothing store may make alterations in suits; or a repair garage may grind valves. The applicability of the exemption to the establishment or to the individual employees is not affected by the performance of such processing activities which are incidental to retail selling or servicing.

(c) *Servicing distinguished from manufacturing for sale.* Work performed on the customer's own goods where the completed job will not result in the creation of a different product from that which the customer brought in will be considered as "services" for purposes of the exemption, and, if recognized in the particular industry as retail services, will be considered as such in determining the applicability of section 13 (a) (2). For example, the recapping of a tire for a customer, the reupholstering of a chair for a customer, the repairing of an automobile for a customer regardless of the degree of repairs, the rebuilding of a pair of shoes for a customer, the rebuilding of a typewriter for a customer, will be regarded as the performance of services for purposes of the application of the section 13 (a) (2) exemption to retail or service establishments and employees employed by them. Where, however, the job would result in the creation of a different product from that which the customer brought in such as where a truck or a bus is made out of the customer's automobile,[60] or where a suit of clothes is made out of a piece of cloth the customer brought in, the activity of making the truck, the bus, or the suit of clothes is a manufacturing activity which would defeat the exemption for the employee performing it unless such activity is exempt under section 13 (a) (4) of the act. If the activity is not performed on the customer's own goods as explained above but is performed for commercial purposes such as where old tires are purchased by an establishment and recapped for purposes of sale, or old typewriters are purchased and rebuilt for purposes of sale, or old furniture is purchased and reupholstered for purposes of sale, etc., the manufacturing involved in these operations would not constitute a "service" for purposes of the exemption and would, therefore, defeat the section 13 (a) (2) exemption for the employees engaged in such operations.[61] To be exempt such employees must qualify under section 13 (a) (4) of the act.

§ 779.15 *Sales for resale*—(a) *General.* The section 13 (a) (2) exemption requires that 75 percent of the establishment's annual dollar volume must be derived from sales of goods or of services (or of both) which are not made for resale. Under this test, at least three-fourths of the total sales of goods or services (or of both) (measured by annual dollar volume) must not be made for resale.[62]

(b) *Meaning of sales "for resale."* A sale is made for resale where the seller knows or has reasonable cause to believe that the goods or services will be resold. Where goods or services are sold for resale, it does not matter what ultimately happens to such goods or services. Thus, the fact that the goods are consumed by fire or no market is found for them, and are, therefore, never resold does not alter the character of the sale which is made for resale. Similarly, if at the time the sale is made, the seller has no knowledge or reasonable cause to believe that the goods are

[58] H. Mgrs. St., 1949, p. 25; see also Grant v. Bergdorf & Goodman Co., 172 F. 2d 109 (C. A. 2); Davis v. Goodman Lumber Co., 133 F. 2d 52 (C. A. 4); Walling v. Snellings, 53 F. Supp. 851 (M. D. Ala.); Walling v. Builders' Veneer & Woodwork Co., 45 F. Supp. 808 (E. D. Wis.). See § 779.18 explaining the applicability of the section 13 (a) (4) exemption.

[60] Walling v. Armbruster, 51 F. Supp., 166 (W. D. Ark.).

[61] Cf. Guess v. Montague, 140 F. 2d 500 (C. A. 4).

[62] See statement of Senator Holland, 95 Cong. Rec., p. 12500.

purchased for the purpose of resale, the fact that the goods are later actually resold is not controlling. In considering whether there is a sale of goods or services and whether such goods or services are sold for resale in any specific situation, the term "sale" includes, as defined in section 3 (k) of the act, "any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition." Thus, under this definition sales by an establishment to a competitor are regarded as sales for resale even though made without profit.[63] However, transfers of goods from one retail or service establishment to another under the same ownership will not be considered as sales for resale.

(c) *Resale of goods in an altered form or as parts or ingredients of other goods.* Normally, goods are considered as sold for resale where the seller knows or has reasonable cause to believe that the goods will be resold either in their original form, or in an altered form, or as a part or ingredient of another article.[64] This is illustrated in cases where goods are resold or redistributed after processing or manufacture. A sale of goods with the seller's knowledge or reasonable cause to believe that the goods will be resold after processing or manufacture is a sale for resale. Thus, a sale of lumber to furniture or box factories, or the sale of textiles to clothing manufacturers, is a sale for resale even though the goods are resold in the form of furniture or clothing. The principle is also illustrated in cases where the article sold becomes a part or an ingredient of another, such as dyes in fabrics, flour in bread and pastries, and salt in food or ice in beverages. Under certain circumstances, sales of goods for a specific use in the manufacture, processing, preparation, preservation, etc., of other goods which will be sold, such as fuel, power, or dies in manufacturing, or cast shed sand for a steel mill, or ice for the refrigeration of railroad freight cars, are in economic effect the same as sales of parts or ingredients even though such goods are consumed in the process, and must be considered as sales for resale.[65]

(d) *Sales of services for resale.* The same principles apply in the case of sales of services for resale. A sale of services with the seller's knowledge or reasonable cause to believe that the services will be resold is a sale for resale. Where, for example, an establishment reconditions and repairs watches for retail jewelers who resell the services to their own customers, the services are for resale. Where a garage repairs automobiles for a second-hand automobile dealer with the knowledge or reasonable cause to believe that the automobiles on which the work is performed will be sold, the service performed by the garage is a sale for resale. The services performed by a dental laboratory in the making of artificial teeth for a dentist for the use of his patients is a sale of services (as well as of goods) for resale. The services of a fur repair and storage establishment for other establishments who resell the services to their own customers, constitute sales for resale. As in the case of the sale of goods, under certain circumstances, sales of services to a business for a specific use in performing a different service which such business renders to its own customers are in economic effect sales for resale as a part of the service that the purchaser in turn sells to his customers, even though such services are consumed in the process of performance of the latter service. For example, it may be essential for a storage establishment to use moth proofing services in order to render satisfactory storage services for its customers. The sale of such moth proofing services to a storage establishment will, therefore, be considered a sale for resale.[66]

(e) *Sales of building materials.* Section 3 (n) of the act, as amended, excludes from the category of sales for resale "the sale of goods to be used in residential or farm building construction, repair or maintenance: *Provided*, That the sale is recognized as a bona fide retail sale in the industry." Under this section a sale of building materials to a building contractor or a builder for use in residential or farm building, repair or maintenance is not a sale for resale, provided, the sale is otherwise recognized as a bona fide retail sale in the industry. If the sale is not so recognized it will be considered a sale for resale. Thus, only bona fide retail sales of building materials to a building contractor or a builder for the uses described would be taken out of the category of sales for resale.[67] The legislative history of the amendment indicates that it is not the intent of its sponsors to remove from the category of sales for resale such sales, for example, as sales of lumber to a contractor to build a whole residential subdivision.[68]

Sales of building materials to a contractor or speculative builder for the construction, maintenance or repair of commercial property or any other property not excepted in section 3 (n) of the act, as explained above, will be considered as sales for resale. Some employers who are dealers in building materials are also engaged in the business of building contractors or speculative builders. Building materials for the carrying on of the employer's contracting or speculative building business are often supplied by the employer himself from or through his building materials establishment. In the analysis of the sales of the building materials establishment for the purpose of determining the qualification of such establishment for the section 13 (a) (2) exemption all transfers of stock made by the employer from or through his building materials establishment to his building business for the construction, maintenance or repair of commercial property or any other property not excepted in section 3 (n) of the act will be considered as sales made by such establishment for resale.[69]

§ 779.16 *Sales made within the State*—(a) *General; sales made "within the State" defined.* Section 13 (a) (2) requires as a condition to the applicability of the exemption that more than 50 percent of the sales of goods or of services (or of both) of an establishment (measured by annual dollar volume) must be made "within the State in which the establishment is located". This limitation means that the establishment must be primarily engaged (more than 50 percent) in selling to or serving customers within its State. If the establishment is engaged to the extent of 50 percent or more in selling or serving customers outside the State of its location, it will not be exempt.[70] Whether the sale or service is made to an out-of-State customer is a question of fact. In order for a customer to be considered an out-of-State customer, some specific relationship between him and the seller has to exist to indicate his out-of-State character. On the one hand, sales made to the casual cash-and-carry customer of a retail or service establishment, who, for all practical purposes, is indistinguishable from the mass of customers who visit the establishment, are sales made within the State even though the seller knows or has reason to believe, because of his proximity to the State line or because he is frequented by tourists, that some of the customers who visit his establishment reside outside the State. If the customer is of that type, sales made to him are sales made within the State even if the seller knows in the particular instance that the customer resides outside the State. On the other hand, a sale is made to an out-of-State customer and, therefore, is not a sale made "within the State" in which the establishment is located, if delivery of the goods is made outside that State.

(b) *Sales "made within the State" and "interstate" sales distinguished.* Sales to customers located in the State where

[63] Northwestern-Hanna Fuel Co. v. McComb, 166 F. 2d 932 (C. A. 8).

[64] H. Mgrs. St., 1949, p. 24.

[65] Cf. Walling v. Amidon, 59 F. Supp. 294 (D. Colo.), reversed on other grounds in 153 F. 2d 159 (C. A. 10); Walling v. Roland Electrical Co., 146 F. 2d 745 (C. A. 4).

[66] Cf. the decision of the Court of Appeals for the Fourth Circuit in the case of Walling v. Roland Electrical Co., (D. Colo.). 146 F. 2d 745, 748 C. A. 4), where the court said: "And we do not think that the company can be held a retail or service establishment within the meaning of the act. The labor of its employees was performed almost altogether in rendering service to commercial and industrial concerns, where the cost of the services would not be absorbed by the one to whom they were rendered but would be passed on as a part of the price of the product."

[67] See discussion of the amendment in the Senate, 95 Cong. Rec., pp. 12533–12535; see also Sen. St., 95 Cong. Rec., p. 14877.

[68] See discussion of amendment in the Senate, 95 Cong. Rec., pp. 12533–12535; see also Sen. St., 95 Cong. Rec., p. 14877.

[69] See definition of "sale" as contained in section 3 (k) of the act which includes "or other disposition". This definition of "sale" is found in § 779.15 (b).

[70] H. Mgrs. St., 1949, p. 26; statements of Senator Holland, 95 Cong. Rec., pp. 12500, 12503. In answer to the question as to what effect the Amendment would have on the large mail-order houses which make retail sales, Senator Holland said: "None whatever. They are not exempt under the present law because most of their sales are made to out-of-State customers, and they would remain nonexempt for the same reason under the proposed amendment." 95 Cong. Rec., p. 12505.

the establishment is located are sales made "within the State" even though such sales may constitute engagement in interstate commerce. Thus, the sale is considered made within the State even though it is (1) made pursuant to prior orders from customers for goods to be obtained from outside the State; (2) contemplates the purchase of goods from outside the State to fill customers' orders; or (3) is made to buyers engaged in interstate commerce or in production of goods for interstate commerce.[11] Note, however, that employees engaged in making interstate sales of any type are engaged in interstate commerce and are covered by the act. Their coverage under the act is not affected by the fact that the interstate sales they make are considered sales made "within the State" under the exemption. Thus, for example, if an establishment fails to meet the requirements for exemption, employees of such an establishment who are engaged in making interstate sales will be covered by the act and will be entitled to its minimum wage and overtime benefits unless they qualify for some other exemption provided by the act.

§ 779.17 *The period of time for computation of sales*—(a) *The annual period.* The tests as to whether an establishment qualifies for exemption under section 13 (a) (2) are specified in terms of percentages of the "annual dollar volume of sales" of goods or of services (or of both). The "annual dollar volume of sales" of an establishment consists of its gross receipts from all types of sales during a 12-month period. Where there may be doubt as to whether the establishment qualifies under the percentage tests for the exemption, analysis of its gross receipts for such annual period must therefore be made before the employer can know whether or not he is required, when he pays his employees, to observe the minimum-wage or overtime-pay standards of the act with respect to employees engaged in commerce or in the production of goods for commerce.

For purposes of determining the applicability of the exemption to an establishment during any calendar quarter (Jan. 1–Mar. 31; Apr. 1–Jun. 30; July 1–Sept. 30; Oct. 1–Dec. 31), analysis of the gross receipts from the various types of sales and services will be made on the basis of the annual (12 calendar months') period which immediately precedes the current calendar quarter. In this manner the employer by analyzing the sales of his establishment for the twelve months immediately preceding any current quarter will know whether or not to comply with the requirements of the act in the workweeks ending in such quarter-year period.

Of course, in applying this rule, the gross receipts of an establishment for such 12-month period will constitute its annual dollar volume for that period even though the establishment did not operate throughout the entire year.

(b) *Establishments commencing new business.* When a new business is commenced in an establishment, the employer will necessarily be unable for a time to determine its annual dollar volume on the basis of the preceding annual period described above, because the establishment will have no gross receipts during such period. In such cases, for purposes of determining the applicability of the exemption in workweeks falling within the calendar quarter in which the establishment commenced operations the gross receipts of such new business during the period in which it has been in operation will be taken as representative of the establishment's annual dollar volume in applying the statutory percentage tests. Thereafter, the analysis can be based on gross receipts in the period described in paragraph (a) of this section.

(c) *Effect of change in basic character of business.* Where at a given time there is a change in the basic character of the business of an establishment, it will be treated as a new establishment from the date of the change.

THE 13 (a) (4) EXEMPTION

§ 779.18 *The requirements of the exemption summarized*—(a) *The specific tests.* The section 13 (a) (4) exemption exempts any employee employed by an establishment which qualifies as an exempt retail establishment under section 13 (a) (2) and which is also recognized as a retail establishment in the particular industry even though it makes or processes on its own premises the goods that it sells, on condition, however, that more than 85 percent of such establishment's annual dollar volume of sales of the goods so made or processed is made within the State in which the establishment is located. In order, therefore, for an establishment to be exempt under section 13 (a) (4), such establishment must meet all of the following six tests:

(1) The establishment must be engaged in making sales of goods.

(2) At least 75 percent of the total sales of the establishment, measured by annual dollar volume, must be both (i) recognized as retail sales of goods and (ii) not for resale.

(3) More than 50 percent of the total sales of goods of the establishment, measured by annual dollar volume, must be made within the State in which the establishment is located.

(4) The establishment must be recognized as a retail establishment in the particular industry.

(5) The goods which the exempt establishment makes or processes must be made or processed at the establishment which sells the goods.

(6) More than 85 percent of the establishment's annual dollar volume of sales of the goods which it makes or processes must be made within the State in which the establishment is located.

(b) *Relationship to the section 13 (a) (2) exemption.* An establishment, to be eligible for the section 13 (a) (4) exemption, must first be shown to be an exempt retail establishment under section 13 (a) (2).[12] The first three of the above tests for the applicability of the section 13 (a) (4) exemption are, accordingly, those required to exempt a retail establishment under the section 13 (a) (2) exemption. These tests have been discussed in §§ 779.7 through 779.17 above, explaining the section 13 (a) (2) exemption. An establishment qualifying as an exempt retail establishment under these three tests for purposes of section 13 (a) (2), in accordance with the principles set forth in the earlier discussion, will be equally qualified under the same tests applicable to the section 13 (a) (4) exemption.

§ 779.19 *Limitation of exemption to recognized retail establishments; factories not exempt.* The fourth test for the section 13 (a) (4) exemption requires the establishment to be recognized as a retail establishment in its industry. The clear intent of this additional test is to limit the exemption to retail establishments only, and to exclude factories as such and establishments to which the retail concept does not apply. In other words, this additional test requires that the establishment as a whole, including the portions devoted to the making or processing of goods be recognized as a retail establishment in the particular industry. Typical of the establishments which may be recognized as retail establishments under the exemption are custom tailor shops, candy shops, ice cream parlors, bakeries, drug stores, optometrist establishments, ice plants and other local retail establishments, which make or process the goods they sell [13] and meet the other tests for exemption.

§ 779.20 *Goods must be made at the establishment which sells them.* In order to make certain that the exemption applies to retail establishments only and not to factories, the fifth test for the ap-

[11] H. Mgrs. St., 1949, p. 24; Sen. St., 95 Cong. Rec., p. 14877; statement of Senator Holland, 95 Cong Rec., p. 12500; statement of Senator Taft, 95 Cong. Rec., p. 12510.

[12] See in this connection § 779.22.

[13] The legislative history of the section 13 (a) (4) exemption is explicit on the point that the exemption is not intended to exempt manufacturing establishments as such and that its applicability is limited to establishments which are recognized as retail establishments in the traditional sense. There is set forth below an account of the legislative history of this exemption which explains the extent of its applicability with reference to manufacturing or processing as viewed by its sponsors and proponents:

Referring to the section 13 (a) (4) exemption, Representative Lucas said: "* * * I have given some exemption under the act to small tailors, candy shops, bakers, and those in like lines of business who process or make the goods which they sell in retail establishments." 95 Cong. Rec., p. 11001.

Representative McConnell, referring to the provision that the establishment must be recognized as a retail establishment in the particular industry said: "That means it is not a manufacturing company." 95 Cong. Rec., p. 11200.

In explaining the exemption, Representative Lucas also said: "Was not the purpose of putting this amendment in this bill to exempt the custom tailor, because under the Administrator's interpretation, bulletin No. 6 it was held that the little tailor shop was a manufacturer and coming under the classification of a manufacturer he could not enjoy the retail exemption?" 95 Cong. Rec., p. 11200.

In commenting on Representative Lanham's remark that the exemption "would permit the Schwab clothing people who have retail outlets to escape and to get out from under the wage and-hour law," Representa-

plicability of the section 13 (a) (4) exemption requires that the goods which the exempt establishment makes or processes must be made or processed at the establishment which sells the goods. This does not contemplate an establishment that makes or processes any goods which the employer sells only from other establishments. If the establishment making the goods does not sell such goods but only makes them for the purpose of selling them at other establishments the establishment making the goods is a factory and not a retail establishment.[74] Thus, the exemption does not apply to employees making or processing goods in a manufacturing establishment merely because the goods will ultimately be sold at retail in a retail establishment. A candy kitchen manufacturing candy for sale at separate retail outlets is a manufacturing establishment and not a retail establishment.[75]

On the other hand, as long as an establishment qualifies as an exempt retail establishment under section 13 (a) (2) and is recognized as a retail establishment in the particular industry, it will not lose an otherwise applicable exemption under section 13 (a) (4) merely because its sales of goods made or processed at the establishment are sales for resale or are not recognized as retail sales in the particular industry. Such sales as wholesale sales and sales for resale and sales not recognized as retail sales in the industry, will be counted in the 25-percent tolerance permitted by the exemptions. Thus, for example, a bakery otherwise exempt under section 13 (a) (4) making and selling baked goods on the premises will nevertheless remain an exempt retail establishment even though it engages in the sale of baked goods to grocery stores for resale if such sales, together with sales not recognized as retail in the industry, do not exceed 25 percent of the total annual dollar volume of the establishment.

The fact that goods made or processed on the premises of a bona fide retail establishment are sold by the establishment through outside salesmen will not defeat the exemption if otherwise applicable. On the other hand, in the case of a factory or similar establishment devoted to making or processing goods, the fact that its goods are sold at retail by outside salesmen provides no ground for recognizing the establishment as a retail establishment or qualifying it for exemption.

If goods sold by an exempt retail establishment are not made or processed at the establishment which sells them, the making or processing of such goods is not exempt under section 13 (a) (4) even though it takes place in another establishment, such as a warehouse, which services the exempt retail establishment exclusively. Such a warehouse is not an establishment which makes or processes the goods that it sells and is not recognized as a retail establishment in the industry within the meaning of the exemption.

§ 779.21 *The 85-percent requirement.* The sixth requirement for the section 13 (a) (4) exemption is that more than 85 percent of the establishment's sales of the goods it makes or processes, measured by annual dollar volume, must consist of sales made within the State in which the establishment is located. This requirement recognizes that a retail establishment of the type intended to be exempt under this exemption may also sell goods which it does not make or process. The 85-percent requirement applies only to the sales of goods which are made or processed at the establishment. This must not be confused with the additional test which requires that the establishment, to be exempt, must derive more than 50 percent of its entire annual dollar volume of sales of goods from sales made within the State. Both tests must be met. In other words, more than 85 percent of the establishment's annual dollar volume of sales of goods made or processed at the establishment and more than 50 percent of the establishment's annual dollar volume of sales of all the goods sold by the establishment must be derived from sales made within the State.

§ 779.22 *The section 13 (a) (4) exemption does not apply to service establishments.* The section 13 (a) (4) exemption applies to retail establishments engaged in the selling of goods. It does not apply to service establishments.[76] If the establishment is a

---

tive Lucas said: "I do not see how the courts could so interpret this exemption; that is, exempt manufacturing establishments, as such." 95 Cong. Rec., p. 11216.

In explaining the section 13 (a) (4) exemption, Representative Lesinski said: "The provisions of section 13 (a) (4) do not make retail establishments of manufacturing establishments merely because such establishments have, or create, a retail outlet in the same building. The section does not permit the tail to wag the dog, and the nature of the establishment is still controlling. If it is not a retail establishment it is not exempt, even though it meets all the other tests." 95 Cong. Rec., p. 14942.

The Statement of the Managers on the part of the House (page 27) said: "The exemption will apply typically to bakery establishments which bake the breads and pastries which they sell, ice plants which manufacture the ice they sell, and ice cream parlors or candy kitchens which make their own ice cream or candy."

In the Senate, Senator George proposed to modify his amendment (the section 13 (a) (4) exemption) by adding to it the proviso "That more than 85 percent of such establishment's annual dollar volume of sales of goods or services is made within the State in which the establishment is located." This modification was made, Senator George said, in order "to safeguard against any abuses * * *." Commenting on Senator Pepper's statement in this regard that Senator George "did not intend language which would cover large scale establishments or manufacturers engaged in interstate commerce" Senator George said: "That is entirely correct, Mr. President, and I offer the modification in order to cover that situation as nearly as I can. I wish to say that the word 'establishment' has been very well defined in the Wage and Hour Act. It means now a single physically separate place of business which possesses the characteristics of a retailer and it does not mean an entire business enterprise." Continuing his explanation, Senator George further said: "A single establishment means a single separate unit in which both will take place. My purpose, Mr. President, and I wish to go on record as saying so, is not to embarrass the administrators of the act by bringing in the large producers who might be extensive manufacturers, but only small retailers, who are strictly retailers, who fully comply with the provisions relating to retailers, but who make some other product which they sell on the premises." 95 Cong. Rec., p. 12579. The section 13 (a) (4) amendment was passed in the Senate with Senator George's modification. This modification was later adopted by the Conference Committee on the Bill after deleting the reference to "services" which the modification contained. H. Mgrs. St., 1949, p. 27. In order to limit the applicability of the exemption to exempt retail establishments and to exclude manufacturing establishments as such, the Conference Committee also added to the section 13 (a) (4) amendment the condition that the goods which the exempt establishment makes or processes must be made or processed at the establishment which sells the goods. H. Mgrs. St., 1949, p. 27.

The Statement of a majority of the Senate Conferees explained the section 13 (a) (4) exemption as follows: "This provision is intended to exempt only retail establishments, not factories. The goods must be made or processed at the establishment in which they are sold in order for the exemption to apply. There is no exemption for employees making or processing goods in a manufacturing establishment merely because the goods will ultimately be sold at retail in a retail establishment. Under the present law (Phillips v. Walling, 324 U. S. 490) a retail establishment means a single physically separate place of business which possesses the characteristics of a retailer and does not mean an entire business enterprise. The conference agreement in no way changes the meaning of the term 'establishment.' Typical of the establishments which may qualify for exemption under this provision are small bakeries selling locally at retail which bake on the store premises, and local drug stores which may compound some proprietary medicines for retail in the same establishment." 95 Cong. Rec., p. 14877.

[74] Notice is taken that in certain industries due to the nature of the article sold sales made by outside salesmen such as sales of ice off a truck to homes are recognized as equivalent to sales made on the premises of the establishment.

[75] Fred Wolferman, Inc. v. Gustafson, 169 F. 2d 759 (C. A. 8). See also the legislative history of the exemption in footnote 73.

[76] That the section 13 (a) (4) exemption is not intended to apply to service establishments is clear from the specific terms of the exemption and from its legislative history. In contradistinction to the language of the section 13 (a) (2) exemption which includes retail services as well as sales, the section 13 (a) (4) exemption speaks only of "retail sales" and "retail establishments" and makes no reference to "services". Under the terms of section 13 (a) (4), an exempt retail establishment is exempt notwitstanding that such establishment makes or processes at the establishment the goods that it sells. An establishment performing services is of course not selling the goods on which the services are performed. The making or processing, therefore, cannot have reference to "services". In fact, the conference agreement on the bill deleted the only reference to "services" which the Senate version of the amendment contained. The Statement of the Managers on the Part of the House, also in enumerating the six tests required by the section 13 (a) (4) exemption, specified the applicability of the tests to "sales of goods", making no mention or reference to "services". H. Mgrs. St., 1949, p. 27.

service establishment, it must qualify under section 13 (a) (2) in order to be exempt.[71] A retail establishment selling goods may, however, also perform services incidental or necessary to the sale of such goods such as delivery service by a grocery store or installation of aerials by a radio dealer for his customers without affecting the character of the establishment as a retail establishment qualified for exemption under section 13 (a) (4).

THE 13 (a) (3) LAUNDRY AND DRY CLEANING ESTABLISHMENT EXEMPTION

§ 779.23 *The requirements of the exemption summarized.* Section 13 (a) (3) grants a separate and specific exemption from the minimum wage and overtime requirements of the act with respect to any employee employed by any establishment engaged in laundering, cleaning, or repairing clothing or fabrics subject to specified conditions.[72] In order to qualify for exemption such an establishment must meet two tests. First, over 50 percent of the establishment's annual dollar volume of sales of such services must be derived from sales of such services made within the State in which the establishment is located.[73] Second, 75 percent of the establishment's annual dollar volume of sales of such services must be derived from the sales of such services to customers who are not engaged in a mining, manufacturing, transportation, or communications business. Under the second limitation, no laundry or cleaning establishment will be exempt if more than 25 percent of its laundry or cleaning business is with such customers as manufacturing establishments, mines, railroad companies, airlines, bus companies or other motor carriers, telephone and telegraph companies, or any other business which is a "mining," "manufacturing," "transportation," or "communications" business within the meaning of the act.[74] This would be true whether the services performed are made directly to such business or through an intermediary. For example, the laundering of linens by a laundry establishment for a linen supply establishment which supplies those linens to customers engaged in a mining, manufacturing, transportation, or communications business, will be considered as services performed by the laundry establishment to customers engaged in such businesses. On the other hand, the laundry or dry cleaning establishment will be exempt if it meets the two limitations contained in the exemption, whether it launders towels or other linen for barber or beauty shops, doctors' or dentists' offices, or schools, hospitals, restaurants, or hotels, or for the housewife.[75]

§ 779.24 *Type of establishment intended by the exemption*—(a) *In General.* The section 13 (a) (3) exemption was proposed and enacted into law in order to deal specifically with laundry and dry cleaning establishments as a class in contrast with other types of establishments intended to be exempt as service establishments within the purview of the section 13 (a) (2) retail or service establishment exemption. The legislative history of the exemption indicates that the establishments "engaged in laundering, cleaning or repairing clothing or fabrics" to which section 13 (a) (3) refers are laundry and dry cleaning establishments exclusively. The legislative history further indicates that the establishments referred to are those establishments in the laundry and dry cleaning industries which are devoted to the performance for customers of the services described. Thus, the establishments which will qualify for exemption if they meet the two statutory tests include not only (1) those laundry and dry cleaning establishments which perform on the same premises all the operations of receiving clothing or fabrics from customers, laundering, cleaning, and repairing the articles, and redelivering the articles to the customers, but also (2) central laundry or dry cleaning establishments and (3) those laundry or dry cleaning establishments which receive clothing or fabrics from their customers for laundering, cleaning or repairing at a central laundry or cleaning establishment and return the same to them. The "repairing" service which is included in the statutory language of the exemption has reference to such "repairing" services as are incidental to the performance of laundry or dry cleaning work. It has no reference to "repairing" establishments as such. "Repairing" establishments are not within the section 13 (a) (3) exemption.[76] To be exempt such establishments must qualify under the section 13 (a) (2) retail or service exemption. A laundry or dry cleaning establishment, however, is exempt if it meets the two requirements of the exemption even though it performs repair services on items laundered or cleaned whether such items be shirts, towels, bed sheets, aprons, uniforms, suits, or the fabrics on upholstered furniture, or rugs, or slip covers or draperies or any other clothing or fabric.

(b) *Linen supply services.* It is clear from the legislative history that a laundry or dry cleaning establishment which provides customers with a linen supply service will qualify for the exemption if it meets the statutory tests, even though the clothing or fabrics laundered, cleaned, or repaired by it for its linen supply customers are not owned by them. A linen supply service business as such, however, not engaged in laundering or cleaning the linens which it supplies to its customers, is not within the exemption.

(c) *Central offices and warehouses.* Employees in offices, warehouses, garages, etc., which service a single exempt laundry or dry cleaning establishment in which clothing or fabrics are laundered, cleaned, or repaired are "employed by" such exempt establishment and are within the section 13 (a) (3) exemption regardless of whether the office, warehouse or garage in which they work is part of the premises of such exempt establishment or is a separate establishment,[77] and notwithstanding the fact that customers of such exempt establishment may be served through separate establishments which receive and return the clothing or fabrics laundered, cleaned, or repaired for such customers. On the other hand, where a business organization operates a chain of establishments in which laundering, cleaning, or repairing operations are performed on clothing or fabrics for the customers of such establishments, the employees working for the central offices and warehouses of such a chain of laundry or dry cleaning establishments will not qualify for the section 13 (a) (3) exemption. Such central offices and warehouses, as separate and distinct establishments within the meaning of the exemption, perform no laundering, cleaning, or repairing services and have no customers. Under such circumstances, the two tests of the section 13 (a) (3) exemption cannot be applied to them. Furthermore, employees of such central offices and warehouses are not "employed by" any laundry or dry cleaning establishment but rather "by" the chain itself.[78]

§ 779.25 *The section 13 (a) (3) exemption is exclusive.* It will be recalled that the retail or service establishment exemption under section 13 (a) (2) of the act before the 1949 Amendments included laundry and dry cleaning establishments as service establishments within the meaning of that exemption. The new section 13 (a) (2) defined retail sales or services as those which are recognized as such in the particular industry. It was the Congressional view that there is not a clear concept of retail service in the laundry and dry cleaning industry and for that reason a separate exemption as contained in section 13 (a) (3) was created.[79] The section is complete, setting forth the terms and limitations of the exemption. It is reasonably clear, therefore, that employees employed by an establishment engaged in laundering, cleaning, or repairing clothing or fabrics, if intended to be exempt are exempt under section 13 (a) (3). In other words, a laundry or dry cleaning establishment which fails to qualify for the section 13 (a) (3) exemption may

[71] See § 779.27 on combinations of exemptions.

[72] The text of the statutory provision is set out in § 779.1.

[73] See § 779.16, discussing meaning of sales made "within the State."

[74] H. Mgrs. Stat. 1949, p. 26.

[75] H. Mgrs. St., 1949, p. 26.

[76] The legislative history of the section 13 (a) (3) exemption shows quite clearly that the exemption was intended to deal with the laundry and dry cleaning establishment problem only. Throughout the debates in Congress the amendment was always referred to as the laundry and dry cleaning establishment exemption. This same approach was also carried out in the analysis of the exemption on page 26 of the Statement of the Managers on the part of the House. The references in the analysis were consistently made to the "laundry" or "dry cleaning" establishment. Nowhere in the legislative history is any reference made to a "repairing establishment."

[77] See in this connection § 779.4 (b).

[78] See § 779.4 (b).

[79] In answer to the question as to the reason for a separate exemption for laundries, Senator Holland replied that "There is no clear concept in the laundry and cleaning industry of retail services." 95 Cong. Rec., p. 12503.

not claim exemption under section 13 (a) (2).

THE 13 (a) (13) EXEMPTION FOR CONTRACT TELEGRAPH AGENCIES

§ 779.26 *Scope and applicability of the section 13 (a) (13) exemption.* The section 13 (a) (13) exemption applies, under the conditions specified therein, to any employee or proprietor in a retail or service establishment who is engaged in handling telegraphic messages for the public, and with respect to whom the provisions of sections 6 and 7 of the act would not otherwise apply. The requirements of the exemption are:

(a) The employee or proprietor must be working in a retail or service establishment as defined in section 13 (a) (2) of the act;[46]

(b) He must be engaged in handling telegraphic messages for the public pursuant to an agency or contract arrangement with a telegraph company;

(c) Such employee or proprietor must be one to whom the minimum wage and overtime-pay provisions of the act would not apply in the absence of such handling of telegraphic messages;[47] and

(d) The exemption applies only where the revenue from the telegraphic messages does not exceed $500 a month.

In determining for purposes of this exemption whether an establishment meets the definition of a retail or service establishment as contained in section 13 (a) (2) of the act, the receipts from the telegraphic message agency will not be included in the annual dollar volume of the establishment.

COMBINATIONS OF EXEMPTIONS

§ 779.27 *General statement.* An employee may be engaged in a particular workweek in two or more types of activities for each of which a specific exemption is provided by the act. The combined work of the employee during such a workweek may not satisfy the requirements of either exemption. It is not the intent of the act, however, that an exemption based on the performance of one exempt activity should be defeated by the performance of another activity which has been made the basis of an equivalent exemption under another provision of the act. Thus, where an employee during a particular workweek is exclusively engaged in performing two or more activities to which different exemptions are applicable, each of which activities considered separately would be an exempt activity under the applicable exemption if it were the sole activity of the employee for the whole workweek in question, as a matter of enforcement policy the employee will be considered exempt during such workweek. If the scope of such exemptions is not the same, the exemption applicable to the employee will be equivalent to that provided by whichever exemption provision is more limited in scope.

For example, an establishment engaged in selling feed, fertilizer, hay, and other products at retail may also assemble and prepare agricultural commodities for market. The assembly and preparation of agricultural commodities for market are not recognized as retail activities. However, employees physically engaged in these activities may be exempt from the minimum wage and overtime provisions of the act under section 13 (a) (10). An employee in such an establishment may thus be engaged during a workweek in activities which fall under both the section 13 (a) (2) and the section 13 (a) (10) exemptions. Under the enforcement policy stated above such an employee will be exempt during that workweek if his work under section 13 (a) (2) would be exempt under that exemption if engaged in exclusively for the entire week and if his work under section 13 (a) (10) would be exempt under that exemption if engaged in exclusively for the entire week. For the purpose of determining whether both types of activities are exempt under the applicable exemptions the retail portion of the business will be treated as though it is a separate and independent establishment for purposes of section 13 (a) (2) and entirely unaffected by the activities which fall under section 13 (a) (10) if such activities are exempt under that section. Conversely, the applicability of the section 13 (a) (10) exemption to any employee engaged in the assembly and preparation of agricultural commodities for market would not be affected by the fact of the performance by such employee of exempt activities under section 13 (a) (2).

Combinations of other exemptions May also be achieved in accordance with the general principles outlined above.

In the case of an establishment which sells both goods and services at retail and which qualifies as an exempt establishment under section 13 (a) (2), but cannot, as a whole, meet the tests of section 13 (a) (4) because it sells services as well as goods, a combination of sections 13 (a) (2)–13 (a) (4) exemption may nevertheless be available for employees of the establishment who make or process, on the premises, goods which it sells. Such employees employed by an establishment which, as a whole, meets the tests set forth in section 13 (a) (2), will be considered exempt under this combination exemption if the establishment, on the basis of all its activities other than sales of services, would meet the tests of section 13 (a) (4).

In any event, where two or more exemptions are applicable to an employee's work or employment during a workweek and where he may be exempt under a combination of exemptions as stated above, the availability of a combination exemption will depend on whether the employee meets all the requirements of each exemption which it is sought to combine.

RELATION BETWEEN SECTIONS 13 (a)(2) AND 13 (a) (1)

§ 779.28 *General statement.* Section 13 (a) (1) of the act exempts from its minimum wage and overtime provisions any employee employed in a "bona fide * * * local retailing capacity" as such term is defined and delimited by the Administrator in regulations contained in § 541.4 of this chapter. Thus, while the section 13 (a) (2) exemption applies on an establishment basis to any employee "employed by" a retail or service establishment (as defined in that section) the section 13 (a) (1) local retailing capacity exemption depends on the capacity in which the particular employee is employed, and not on the character of the establishment in which or by which he is employed. It is not material, therefore, in determining the applicability of the section 13 (a) (1) exemption to any particular employee, whether the establishment in which or by which he is employed is a retail or service establishment or a wholesale or a manufacturing establishment. Thus, for example, an employee of a wholesale or a manufacturing establishment who is employed in a local retailing capacity as that term is defined by the Administrator, may be exempt from the wage and hours provisions of the act even though the other employees of the establishment are nonexempt. (For explanation of the scope and applicability of the section 13 (a) (1) local retailing capacity exemption see § 541.400 of this chapter.[48]

Signed at Washington, D. C., this 18th day of October 1950.

WM. R. MCCOMB,
Administrator.

[F. R. Doc. 50-9577; Filed, Oct. 27, 1950; 8:54 a. m.]

[46] See § 779.1 and §§ 779.8–779.15 discussing the scope and applicability of the 13 (a) (2) retail or service establishment exemption.

[47] See Western Union Tel. Co. v. McComb, 165 F. 2d 65 (C. A. 6), certiorari denied, 333 U. S. 862.

[48] 14 F. R. 7705.

TITLE 32—NATIONAL DEFENSE

Chapter V—Department of the Army

JOINT PROCUREMENT REGULATIONS

MISCELLANEOUS AMENDMENTS

The Joint Procurement Regulations, formerly published in Chapter VIII, Title 10, are amended as follows:

1. Effective immediately within the Department of the Air Force, and effective not later than January 1, 1951, within the Department of the Army, §§ 802.103, 802.103–1, and 802.103–2 are rescinded and the following substituted therefor:

§ 802.103 *F. o. b. point.* Unless there are valid reasons to the contrary (such as, but not restricted to, industry practice, or destination unknown) all supply contracts shall provide for delivery as follows:

(a) When it is estimated that no shipment to a single destination will equal a minimum carload lot (a minimum carload lot shall be deemed to weigh approximately 20,000 pounds), delivery shall be made on the basis of all transportation charges paid to destination (within the continental United States).

(b) When it is estimated that any single contract will require a shipment of minimum carload lot, delivery and acceptance may be either on the basis of f. o. b. plant or on the basis of all transportation charges paid to destination (within the continental United States),

whichever is more advantageous to the Government.

§ 802.103–1 *Formal advertising.* In furtherance of this policy in the case of formal advertising, bids for supplies will be invited as follows:

(a) When it is estimated that no shipment to a single destination will equal a minimum carload lot, bids shall be invited on the basis of delivery by the contractor, all transportation charges paid to destination (within the continental United States).

(b) When it is estimated that a single contract (to be awarded) will provide for a shipment to a single destination of a carload lot or more, bids shall be invited as follows:

Bid A—All transportation charges paid to destination within the continental United States, and

Bid B—F. O. B. carriers' equipment, wharf or freight station at a specified city or shipping point.

The Invitation for Bids will provide that bidders may bid on either or both bases A and B.

§ 802.103–2. *Evaluation of bids and proposals.* (a) Bids and proposals will be evaluated on the basis of over-all cost to the Government. In connection with bids or proposals submitted on an F. O. B. origin basis, transportation costs between the source of supply and the designated destination point or points will be considered in determining the lowest estimated cost to the Government.

(b) To facilitate the evaluation of bids and proposals and to assure accurate analyses, contracting officers will request the advisory services of local Transportation Officers to assist in determining the lowest possible transportation costs to a given point.

2. In § 804.105–3, paragraph (b) is amended to read as follows:

§ 804.105–3 *Specific authorization; statutory authorities.* * * *

(b) *Defense Appropriation Act, 1951 (Pub. Law 759, 81st Cong.), approved 6 September 1950.*

SEC. 601. During the current fiscal year, the Secretary of Defense and the Secretaries of the Air Force, Army, and Navy, respectively, if they should deem it advantageous to the national defense, and if in their opinions the existing facilities of the Department of Defense are inadequate, are authorized to procure services in accordance with section 15 of the act of August 2, 1946 (5 U. S. C. 55a), but at rates for individuals not in excess of $50 per day, and to pay in connection therewith travel expenses of individuals, including actual transportation and per diem in lieu of subsistence while traveling from their homes or places of business to official duty station and return as may be authorized by law: *Provided*, That such contracts may be renewed annually.

3. Section 804.105–6 is rescinded and the following substituted therefor:

§ 804.105–6 *Citation of statutory authorities.* Each such contract, supplemental agreement, and change order, will cite as authority section 601, Defense Appropriation Act, 1951 (PL 759, 81st Cong.) approved September 6, 1950, and, in addition, section 15 of the act approved August 2, 1946 (60 Stat. 810; 5 U. S. C. 55a).

4. A new paragraph (c) is added to § 809.201 as follows:

§ 809.201 *Executive order of the President.* * * *

(c) The prohibition contained in Executive Order No. 325A does not apply to contracts entered into between the Government and State prisons for the purchase of manufactured items, subject to all of the following limitations:

(1) That such contracts are not prohibited by the law of the State in which the prison is located;

(2) That exemption from the Walsh-Healey Public Contracts Act be obtained, in accordance with procedures prescribed in § 809.607 in cases of contracts exceeding $10,000;

(3) That no purchase from a State prison or other correctional institution will be made of items contrary to the provisions of §§ 810.200 to 810.208 of these regulations; and

(4) That the contract is otherwise proper.

The convict labor clause prescribed by §§ 406.103–15 and 411.203 of Chapter IV, Title 32, be omitted from such contracts.

5. Paragraph (m) of § 803.101–2 is rescinded.

[Proc. Cir. 22, Oct. 17, 1950] (R. S. 161; 5 U. S. C. 22. Interpret or apply 62 Stat. 21; 41 U. S. C. Supp. 151–161)

[SEAL] EDWARD F. WITSELL,
Major General, U. S. A.,
The Adjutant General.

[F. R. Doc. 50–9548; Filed, Oct. 27, 1950; 8:49 a. m.]

Subchapter B—Claims and Accounts

PART 538—ALLOTMENTS OF PAY

MISCELLANEOUS AMENDMENTS

Part 538 is hereby amended as follows:

1. Sections 538.8 to 538.10, inclusive, are amended to read as follows:

§ 538.8 *Effective date; class E allotments.* Ordinarily, class E allotments will be made effective the first of the month following that in which the authorization form is executed and payment will be made accordingly, provided the authorization form is received by the Class E Allotment Division before the 10th day of the month in which allotment is to become effective. Exceptions will be made for class E allotments covering commercial insurance premiums where because of circumstances beyond the control of the allotter an earlier effective date may be necessary. Allotment checks are mailed in time to reach the allottee by the 15th of the month following the month in which allotment became effective; for example, an allotment effective February 1 will be paid by a check dated March 1 which will be mailed to reach the allottee not later than March 15. A class E allotment will not be made effective with the month in which an officer or enlisted person enters on duty except when an enlisted person is commissioned, or is appointed a warrant officer; when an aviation cadet is commissioned; when a warrant officer is commissioned; or when a graduate, United States Military or Naval Academy, enters commissioned officer status.

§ 538.9 *Allotments to joint bank accounts.* Class E allotments to joint bank accounts are acceptable provided the allotter has made satisfactory arrangements with the bank for the acceptance of the allotment. In such case, checks will be drawn to the order of the bank for the credit of only one of the two individuals in whose name the account has been established. Therefore, the authorization will bear the name of only one of the individuals to whose credit the allotment will be made. The allotter's name should be used when the allotter is one of the two persons in whose name the joint account is established. Care must be exercised to give the full and correct name, branch, if any, and address of the banking institution where the account is maintained.

§ 538.10 *Effect of certain changes in status on class E, D, and N, allotments—*(a) *Death of allotter.* Allotments are in the nature of powers of attorney, which are revoked by the death of the allotter. The Allotment Division will make no further payment of an allotment after receipt of advice of the allotter's death, even though it is known that deductions were made from the allotter's pay and not paid to the allottee. Such amounts become a part of the estate of the allotter (see 10 Comp. Dec. 208, id. 855). Deaths of allotters occurring outside the continental limits of the United States and in Alaska will be reported to the Allotment Division by The Adjutant General, Department of the Army, or Headquarters, United States Air Force, Director of Military Personnel, Washington 25, D. C., attention: Casualty Branch, Personnel Services Division. Allotments of deceased personnel will be discontinued as provided in current Army and Air Force directives.

(b) *Death of allottee.* Upon receipt of information of the death of any person to whom an allotment is payable, the Allotment Division will discontinue the allotment and report the date of discontinuance to the allotter through his commanding officer. When an allotment check, even though indorsed, is not collected or negotiated prior to the death of the allottee, the amount thereof does not become a part of the allottee's estate or subject to any expense incurred by, or on behalf of, the allottee before or after death (see 26 Comp. Dec. 855). All such checks will be returned to the Allotment Division. Unless the allotter has been separated from the service and has received final payment, the Allotment Division will, upon receipt of the returned check, give authority to credit the amount on the current Military Pay Record.

2. Change the section headnote, the last sentence of paragraph (a), and the first sentence of paragraph (b) of § 538.11, as follows:

§ 538.11 *Allotments to dependents of personnel missing, missing in action, be-*

leagured, besieged, interned in a neutral country, or captured by the enemy—(a) *Notification to dependents.* * * * The emergency addressee will be requested to notify interested relatives and dependents of benefits and to advise insurers, or other persons who may have knowledge of life insurance premiums that should be paid by allotment, to communicate information thereof on military personnel to Finance Officer, Military Pay Division; on civilian personnel to St. Louis Finance Office, U. S. Army.

(b) *Accounts.* The military pay records of persons absent in a missing status are maintained by the Military Pay Division, Army Finance Center, Building 204, St. Louis 20, Missouri. * * *

3. Add § 538.12, as follows:

§ 538.12 *Retirement.* When Regular Army or Regular Air Force personnel are retired, they may authorize class E allotments for commercial life insurance and class D and N allotments.

[SR's 35-1900-1, 35-1900-9, 35-1900-13, Oct. 10, 1950, and SR 35-1900-21, Sept. 12, 1949] (Sec. 16, 30 Stat. 981, as amended; 10 U. S. C. 894)

[SEAL] EDWARD F. WITSELL,
Major General, U. S. A.,
The Adjutant General.

[F. R. Doc. 50-9550; Filed, Oct. 27, 1950; 8:49 a. m.]

Subchapter F—Personnel

PART 571—RECRUITING AND ENLISTMENTS

REGULAR ARMY AND AIR FORCE

Sections 571.1 through 571.4 are rescinded and the following §§ 571.1 through 571.5 are substituted therefor.

Sec.
571.1 General.
571.2 Qualifications for enlistment.
571.3 Periods and grades.
571.4 Choice of assignment.
571.5 Transportation of accepted applicants.

AUTHORITY: §§ 571.1 to 571.5 issued under sec. 6, 39 Stat. 169, as amended; 10 U. S. C. 42.

SOURCE: SR 615-105-1, AFR 39-9, Sept. 6, 1950.

§ 571.1 *General*—(a) *Purpose.* Sections 571.1 to 571.5 provide and set forth the qualifications for enlistment of men and women in the Regular Army and Air Force. Enlistment will be accomplished in numbers authorized on a monthly basis by the Departments of the Army and the Air Force.

(b) *Definitions.* For the purpose of §§ 571.1–571.5 the following definitions apply:

(1) The term "enlistment" unless otherwise specified, includes reenlistment of Regular Army and Air Force personnel, enlistment of former Army of the United States personnel, and original enlistment of personnel without prior Army or Air Force service.

(2) Where instructions are applicable only to men, the word "men" or "male" is used; where instructions are applicable only to women, the word "women" or "female" is used; where instructions are applicable to both men and women, the term "persons," "applicants," "individuals," or "personnel" is used.

§ 571.2 *Qualifications for enlistment*—(a) *Age*—(1) *Male.* The age requirements for enlistment of males are:

(i) Seventeen to thirty-four years, inclusive, except as provided below.

(ii) Thirty-five years and over but less than fifty-five years of age for those men who have had a minimum of 3 years' prior active service in the Army, Navy, Air Force, Marine Corps, or Coast Guard (at least 3 months of which must have been Army or Air Force service), provided their age, at the time of enlistment, is not greater than 35 plus the length of their prior active Federal service in completed years of honorable service. The original enlistment of a former member of the Navy, Marine Corps, or Coast Guard without prior Army or Air Force active Federal service who is 35 years of age or older is prohibited by law and is not subject to waiver.

(iii) For every applicant for enlistment from civilian life who states he is under 21 years of age, or who claims a greater age but whose personal appearance indicates he may be under 21, the recruiting officer will verify age by requiring the applicant to present a birth certificate or a statement from the State Registrar of Vital Statistics, or other similar State official. When the age of applicant cannot be verified by a birth certificate and the State Registrar of Vital Statistics, or other similar State, municipal, or Government official, states that there is "no record" of the birth of the individual, for Army applicants only, action will be taken to obtain substantiating data regarding age in the following sequence:

(*a*) Baptismal record or a certified copy.

(*b*) Certificate from the physician in attendance at birth.

(*c*) Sworn statement from one or both parents.

(*d*) Notarized copy of the school record from the first school attended showing date of birth or age on attendance.

(*e*) Bureau of Census unnumbered form, subject: Application for Requesting a Search of Census Records, completed for applicant and forwarded to the Bureau of Census requesting report of first census taken after birth. This form may be procured from The Adjutant General or from the Bureau of Census.

All documents submitted by applicants should be originals. If copies are submitted, they will be notarized.

(iv) An applicant who is 17 years of age but has not reached his eighteenth birthday will be required to furnish written consent of his parents or guardian. If he has neither parents nor guardian, a statement to that effect will be included under "Remarks" of the enlistment record. The written consent will:

(*a*) Be signed by both parents, but the consent of one parent may be accepted if the other is absent for an extended period of time. Enlistment is not authorized if either parent objects.

(*b*) Include a statement of date of birth of applicant and a statement as to length of enlistment for which consent is granted.

(*c*) Omit any reference to allotments of pay, special training, or service in any particular branch of service, or at a certain post or locality.

(*d*) Be notarized or the signing of the consent papers by the person authorized to sign them shall be witnessed by a commissioned warrant, or noncommissioned recruiting officer.

(*e*) Be signed in duplicate and fastened securely to the original and duplicate copy of the enlistment record.

(v) Men last separated from the Regular Army with an honorable or general discharge and commissioned officers or warrant officers relieved from active duty in the Army under honorable conditions may be enlisted in the Regular Army within 90 days after date of such discharge or relief from active duty, without regard to the maximum age restrictions prescribed above.

(vi) Men last separated from the Air Force with an honorable or general discharge and commissioned officers or warrant officers relieved from active duty in the Air Force under honorable conditions may be enlisted in the Air Force within 30 days after date of such discharge or relief from active duty without regard to the maximum age restrictions prescribed above.

(2) *Female.* The age requirements for enlistment of females are:

(i) Eighteen to thirty-four years, inclusive, except as provided below. An applicant between the ages of 18 and 21 will be required to furnish written consent of her parents or guardian as prescribed in subparagraph (1) (iv) of this paragraph. This provision is applicable to original enlistment, reenlistment, and extension of enlistment.

(ii) Women 35 years of age and older who have had prior service in the Army or Air Force may be enlisted, provided that at the time of such enlistment their age does not exceed 35 years plus the number of years of prior honorable active service completed in the Army and/or Air Force after July 1, 1943. No waivers will be granted.

(iii) Women last separated from the Regular Army with an honorable discharge and female commissioned officers or warrant officers relieved from active duty in the Army under honorable conditions may be enlisted in the Regular Army within 90 days after date of such discharge or relief from active duty, without regard to the maximum age restrictions prescribed above.

(iv) Women last separated from the Air Force with an honorable discharge and female commissioned officers or warrant officers relieved from active duty in the Air Force under honorable conditions may be enlisted in the Air Force within 30 days after the date of such discharge or relief from active duty, without regard to the maximum age restrictions prescribed above.

(b) *Citizenship.* Applicants who are otherwise qualified may be enlisted if they are:

(1) Citizens of the United States.

(2) Aliens who can present written evidence that they have made legal declaration of their intention to become citizens of the United States. Only those declarant citizens who can present the triplicate copy of declaration of intention (United States Department of Justice; Immigration and Naturalization Service Form N–315), duly authenticated by a Federal district court, are eligible for enlistment under this authority. This subparagraph is not applicable to female applicants for enlistment in the Regular Air Force.

(3) Puerto Ricans who present satisfactory evidence that they have permanently changed their residence to the continental United States. (A male insular Puerto Rican native resident is authorized to enlist in Puerto Rican units of the Regular Army in the Caribbean Command only, under special instructions issued by the Department of the Army.)

(c) *Educational requirements for female applicants.* The educational requirements for female applicants without prior military service (including those whose only service has been in the WAAC) are as follows:

(1) *Regular Army.* Female applicants for enlistment in the Regular Army must possess a certificate of graduation from high school or hold a State-recognized equivalent, or must present substantiating data that they have sucessfully completed the high school level general educational development (GED) test. (This test will not be administered by recruiting personnel, but applicants desiring information about the GED test will be advised to contact the appropriate State Department of Education for information concerning this or similar tests.)

(2) *Air Force.* Female applicants for enlistment in the Air Force must possess a certificate of graduation from high school. No waivers will be granted.

(d) *Physical standards*—(1) *General.* Applicants for enlistment must meet fully the physical standards for acceptance as prescribed AR 40–115 (Army regulations pertaining to physical standards and physical profiling for enlistment and induction).

(2) *Individuals discharged by reason of physical disability.* Applicants for enlistment in either the Army or the Air Force who were last separated by reason of physical disability will not be accepted for enlistment without prior approval from The Adjutant General for Army applicants and from the Chief of Staff, United States Air Force, for Air Force applicants, even though they currently meet the physical standards prescribed. Requests for waiver of prior discharge by reason of physical disability will be accompanied by a complete report of physical examination and physical profile on Standard Forms 88 and 89, including a detailed description and current evaluation of the physical defect responsible for the individual's discharge. Requests for waivers will be forwarded as follows:

(i) *Regular Army.* (*a*) Applicants whose last prior active service was in the status of an enlisted person in the Army or Air Force to the Chief, Demobilized Personnel Records Branch, Records Administration Center, St. Louis 20, Missouri.

(*b*) Applicants other than those prescribed in (*a*) above to The Adjutant General, Washington 25, D. C., Attention: AGSE.

(ii) *Air Force.* Headquarters United States Air Force, Director of Training, Attention: Airmen Procurement Branch, Personnel Procurement Division, Washington 25, D. C.

(e) *Police clearance.* Prior to enlistment of male individuals in the Regular Army or Air Force, except those who enlist in the Regular Army within 90 days or in the Air Force within 30 days from date of discharge from any of the Armed Forces, recruiting installations will communicate with the police in each town where the applicant has resided for a period of 6 months or more in the previous 3-year-period. When reply from police is not received within 21 days, applicant may be enlisted provided he is the type desired by the Army or Air Force and every effort has been made to check his character through local sources.

(f) *Enlistment of persons with dependents*—(1) *Regular Army.* (i) Male applicants from civilian life with dependents, including those who reenlist within 90 days after date of discharge, are authorized to enlist in the Regular Army only if entitled to enlistment in grade E–4 or higher, or if promised grade E–4 upon completion of reception processing and training.

(ii) In especially meritorious cases of men with long periods of honorable service (normally 6 years or more) who do not meet the requirements of subdivision (i) of this subparagraph, waivers may be granted by major commanders for Army enlistees only. Requests for waivers will include a statement of total prior service, time lost under Article of War 107 in last enlistment, number of court-martial convictions in last enlistment, present grade, and reason they have not attained a higher grade.

(2) *Air Force males.* (i) Male applicants from civilian life having dependents, including men with prior service in the Army, Navy, Marine Corps, and Coast Guard, will be enlisted in the Air Force only if they are eligible to enlist in grade E–7, E–6, or E–5, except that applicants who qualify for grade E–4 may be enlisted if they have completed more than seven years service for pay purposes.

(ii) Airmen last discharged in grade E–7, E–6, or E–5 will be reenlisted without regard for the number of dependents, provided reenlistment is accomplished within 30 days after date of discharge.

(iii) Airmen last discharged in grade E–4 who have completed 6 years or more of active Federal service will be reenlisted without regard for the number of dependents, provided reenlistment is accomplished within 30 days after date of discharge.

(3) *Regular Army and Air Force—females.* (i) Married female applicants without prior service will not be enlisted in the Regular Army or Air Force. No waivers will be granted.

(ii) Female applicants who have children under 18 years of age will not be enlisted in the Regular Army or Air Force. A woman who has any legal or other responsibility for the custody, control, care, maintenance, or support of any child or children, including stepchildren or foster children under 18 years of age, will not be enlisted. No waivers will be granted. Women who have surrendered all rights to custody and control of natural children through formal adoption or final divorce proceedings may be accepted for enlistment. The provisions of subparagraphs (1) and (2) of this paragraph also apply to women.

(g) *Regular Army enlistment restrictions for persons last discharged below grades E–3 and E–2.* The restrictions imposed in this paragraph apply to individuals with prior service enlisting from civilian life and to individuals reenlisting from within the service.

(1) Enlistments and reenlistments in the Regular Army of individuals with prior service in any of the Armed Forces (Army, Navy, Air Force, Marine Corps, and Coast Guard), who were discharged on or after May 1, 1949, are restricted to persons who were discharged in the following grades:

(i) Individuals with 24 months or more of prior active service in their current or last enlistment are eligible to enlist in the Regular Army only if discharged in grade E–3 or higher.

(ii) Individuals with less than 24 months but more than 4 months of prior active service in their current or last enlistments are eligible to enlist in the Regular Army only if discharged in grade E–2 or higher.

(2) In especially meritorious cases of individuals with long periods of honorable service (normally 6 years or more) in the Army, who do not meet the requirements prescribed in subparagraph (1) of this paragraph, waivers may be granted by major commands, provided waiver is recommended by the immediate unit commander. Request for waiver will include a statement of total service, time lost under Article of War 107 in last enlistment, number of court-martial convictions in last enlistment, present grade, and reason higher grade has not been attained.

(h) *Classes ineligible for enlistment.* The personnel listed in the following subparagraphs are eligible for enlistment unless the disqualification is waived as indicated. The disqualifications for which authority to grant waivers is not listed below will be waived only by The Adjutant General for Army applicants and by the Chief of Staff, United States Air Force, for Air Force applicants. Such waiver requests for Regular Army applicants will be forwarded to The Adjutant General, Washington 25, D. C., Attention: AGSE; and requests for Air Force applicants will be forwarded to Headquarters, United States Air Force, Director of Training, Attention: Airmen Procurement Branch, Personnel Procurement Division, Washington 25, D. C. Request for waivers will be forwarded only in those cases which as a result of complete investigation the recruiting officer determines to be especially meritorious. Waivers granted will be valid for a period of 60 days from date of issuance, unless otherwise indicated.

(1) For Regular Army male applicants only, who are over age, the commanding officer of each recruiting district and commanders of major oversea commands are authorized to grant waivers to otherwise qualified and desirable applicants who have 3 months or more of prior active Federal Army or Air Force service, provided their age does not exceed 37 plus the number of years of such prior active service.

(2) Aliens, except applicants who have made legal declaration of their intent to become United States citizens. Female declarant citizens are not eligible for enlistment in the Air Force. No waivers will be granted.

(3) Applicants from civilian life who fail to meet the prescribed mental standards. No waivers will be granted.

(4) Persons who are illiterate in the English language, except Insular Puerto Ricans. (Applicants must be able to read, write, and understand English sufficiently to insure that they can satisfactorily absorb the required training.) If doubt exists concerning literacy, Qualification Test 2 will be administered to determine same. No waivers will be granted.

(5) Applicants who fail to meet the prescribed physical standards or who were separated from last period of active service in any of the Armed Forces by reason of physical disability. This includes former Air Force personnel whose report of separation includes the following notation: "AFR 39–14 and AF letter AFPMP–4H, March 20, 1950, Discharge of Physically Disqualified Airmen for the Convenience of the Government."

(6) (i) *Regular Army—male.* Male applicants who have had prior service in the Army, Navy, Air Force, Marine Corps, or Coast Guard whose total time lost under Article of War 107 (or time lost under similar circumstances in the Navy, Marine Corps or Coast Guard) was 60 days or more during their last enlistment or period of active service. Authority to grant waivers for Army applicants is as follows:

(*a*) *Recruiting district commander.* Applicants from civilian life in the continental United States who have lost in excess of 59 days but not more than 89 days during their last enlistment or period of active service.

(*b*) *Company, battery, or similar unit commanders.* Applicants from within the service who have lost in excess of 59 days but not more than 89 days during their last enlistment or period of active service and who reenlist the day following date of discharge.

(*c*) *Commanders of major oversea commands.* Applicants in oversea commands, other than those specified in (*b*) above who have lost in excess of 59 days during their last enlistment or period of active service.

(*d*) *Chief, Demobilized Personnel Records Branch, Records Administration Center, St. Louis 20, Missouri.* Applicants with prior service in the Army or Air Force who have been discharged 4 months or more and who have lost more than 89 days during their last enlistment or period of active service.

(*e*) *The Adjutant General.* All applicants other than those listed in (*a*), (*b*), (*c*), or (*d*) of this subdivision. Requests for waivers for men currently serving will be submitted through division or comparable commands not earlier than 60 days nor later than 30 days prior to expiration of current enlistment and will include data as to number and periods of absences from duty, trials by courts-martial, and recommendation of immediate commanding officer with reasons therefor.

(ii) *Air Force—male.* Male applicants who have had prior service in the Army, Navy, Air Force, Marine Corps, or Coast Guard whose total time list under Article of War 107 (or time lost under similar circumstances in the Navy, Marine Corps, or Coast Guard) was 30 days or more during their last enlistment or period of active service. Authority to grant waivers of this restriction for airmen currently serving is delegated to the wing commander or his equivalent. Requests for such waivers will be initiated in writing by the applicant's unit commander and submitted through channels to the wing commander not earlier than 60 days nor later than 30 days prior to expiration of current enlistment. Such requests should include specific data as to number and periods of absence from duty, trials by courts-martial, and the recommendations of the unit commander, with reasons therefor. An airman in this category who indicates, prior to or at the time of discharge, a desire to reenlist will be given the opportunity to present his case to the wing commander through the offices of his immediate commanding officer in the manner indicated above. Requests for waivers of excessive time lost by applicants other than prescribed above will be forwarded direct to Headquarters United States Air Force, Washington 25, D. C., for final decision.

(iii) *Regular Army and Air Force—females.* Female applicants from civilian life who have had prior military service in the Army, Navy, Air Force, Marine Corps, or Coast Guard who have lost any time under Article of War 107 (or have lost time under similar circumstances in the Navy, Marine Corps, or Coast Guard) during their last period of active service. No waivers will be granted. Enlisted women of the Air Force who reenlist in the Air Force will be governed by subdivision (ii) of this subparagraph pertaining to male reenlistees. Major commanders may waive not more than 5 days' time lost under Article of War 107 for enlisted women of the Army who reenlist in the Regular Army the day following discharge.

(7) For prior services personnel, only felonies committed subsequent to the date of separation from last period of extended active service are considered disqualifying. No waivers will be granted.

(8) Persons who have been imprisoned under sentence of civil court for other than a felony and persons who have had frequent difficulty with law enforcement agencies or who have criminal tendencies, a history of antisocial behavior, or who are of questionable moral character. No waivers will be granted except in meritorious cases of male applicants in which juvenile delinquency or imprisonment for minor traffic violations are involved. Waivers of offenses involving juvenile delinquency or minor traffic violations may be granted by the commanding generals of major commands for Army applicants and by the Chief of Staff, United States Air Force, for Air Force applicants, if as a result of investigation it is determined that the applicant will be an asset to the service. The investigation will include letters from at least three reputable citizens who are acquainted with the individual, information concerning the applicant's current character and habits, his reputation in the community in which he resides, and a record of his employment since his release from the control of civil authorities, as well as the recommendation of the investigating officer. Only those juvenile delinquents and minor traffic violators whose cases are individually determined to be especially meritorious and who have served the period of parole or probation decreed by the court plus a minimum period of 6 months as law abiding members of a civil community will be accepted. Army commanders and overseas commanders will not enter into a contract, implied or otherwise, to effect the enlistment of an individual whose actions have brought him into the probative custody of a court and whose subsequent conduct has not been of such worthy caliber as to have caused the court having jurisdiction to release him from the unexpired period of probation prior to the time of application for enlistment. A record of adjudication of conduct by a juvenile court in the State of Ohio under the statute of that State or by a juvenile court of any other State having a similar law is not a bar to enlistment.

(9) Persons who have criminal charges filed and pending against them alleging a violation of State, Federal, or Territorial statute but as an alternative to further prosecution, indictment, trial, or incarceration for such violation are granted by a court a release from the charge on the condition that they will apply and are accepted for enlistment in Regular Army or Air Force. No waivers will be granted.

(10) Persons under parole, probation, or suspended sentence from any civil court. No waivers will be granted.

(11) Insane or intoxicated persons. No waivers will be granted.

(12) Persons who have an active or chronic venereal disease. In the case of female applicants for enlistment in the Air Force, a history of venereal disease will be disqualifying. No waivers will be granted.

(13) Applicants with prior service in any of the Armed Forces separated from their last period of active service for any of the following reasons:

(i) (*a*) *Army and Air Force:*

Homosexual.	Disloyal and subversive.

(*b*) *Navy and Marine Corps:*

Unsuitability.	Misconduct.
Inaptitude.	Sentence of court martial.
Unfitness.	

(c) *Coast Guard:*

Misconduct.	Sentence of a summary or general court martial.
Unfitness.	
Inaptitude.	
Unsuitability.	

No waivers will be granted in (*a*), (*b*), and (*c*) of this subdivision.

(ii) Male applicants last separated from any of the Armed Forces with other than an honorable discharge or general discharge, with the exception of general prisoners authorized to enlist under Department of the Army and Department of the Air Force regulations.

(iii) Female applicants last separated from any of the Armed Forces with a general discharge or other than honorable discharge. No waivers will be granted.

(iv) Applicants last discharged from the Army or Air Force under AR 615–368 or AR 615–369, AFR 39–16, AFR 39–17, or AFR 39–19, or paragraphs 4a or b, or 6, AR 615–367. No waivers will be granted for Air Force.

(v) Applicants last discharged under AR 615–366 or AFR 39–21, AFR 39–22, or AFR 39–23. In those cases deemed meritorious, requests for waivers for Regular Army applicants will be forwarded to the Chief, Demobilized Personnel Records Branch, Records Administration Center, St. Louis 20, Missouri. No waivers will be granted for women.

(vi) Former Air Force enlisted persons whose discharge certificates (reports of separation) bear the notation under authority for discharge, "Par. 1, AR 615–365 and Department of the Air Force letter AFPMP–4, April 1, 1949, subject: Disposition of Enlisted Men in U. S. Air Force."

(vii) Applicants last discharged from the Army whose DD Form 214 (Report of Separation from the Armed Forces of the United States) includes the following: "Par. 2i, AR 615–365, Enlisted man does not meet the requirements for retention."

(viii) Applicants whose Form 214 includes the following statement under item 38: "Paragraph 11, SR 615–105–1/AFR 39–9, applies."

(ix) Applicants discharged under the following provisions because of reduction in total compensation under the savings provisions of the Career Compensation Act of 1949, until a period of 120 days has elapsed from date of discharge from the Army or Air Force or 1 year has elapsed from date of discharge from the Navy, Marine Corps, or Coast Guard:

(*a*) Army—SR 615–365–5.

(*b*) Air Force—AFR 39–14 and AFPMP–4C 4844, November 1, 1949, or paragraph 4, AFR 39–40.

(*c*) Navy, Marine Corps, and Coast Guard—ALNav 117 and 119. No waivers will be granted for Air Force.

(x) Female applicants discharged from the Army or the Air Force on or after June 9, 1950, prior to normal expiration of term of service by reason of marriage under paragraph 4, SR 615–360–10, or section II, AFR 39–11, until a period of 1 year has elapsed from date of discharge.

(xi) Applicants last discharged by reason of dependency or hardship, unless the cause for which discharged has been removed. The burden of proof that the cause for which discharged no longer exists rests upon the applicant for enlistment and will be furnished in the form of affidavits or sworn statements executed by the person or persons on whose behalf the dependency discharge was secured or another member of the community who is thoroughly familiar with the home conditions of the applicant's family. The facilities of Selective Service or the American Red Cross will not be used to secure this evidence. The documentary evidence will be fastened to the original enlistment record and will become a part of applicant's permanent records. Provided adequate proof is presented to the recruiting officer, enlistment processing may continue without reference to higher headquarters, except as follows: Applicants last discharged by reason of dependency or hardship, who apply for enlistment within 1 year from date of such discharge, will not be accepted for enlistment unless a waiver is granted by The Adjutant General for Army applicants and by the Chief of Staff, United States Air Force, for Air Force applicants. Documentary proof that condition for which previously discharged no longer exists will accompany requests for waiver.

(xii) Former commissioned officers or warrant officers last separated either as a direct result of reclassification and/or elimination proceedings or by resignation in lieu thereof and former officers or warrant officers last separated under AR 605–200 or AFR 36–2.

(xiii) Former Regular Army or Regular Air Force officers regardless of conditions under which separated without specific authorization from The Adjutant General for Army applicants and from Headquarters, United States Air Force, for Air Force applicants.

(14) Persons who apply for enlistment from civilian life and who claim prior honorable service in the armed forces, but who are unable to produce their discharge certificate or other written evidence of last active service until verification of such service is received.

(15) Persons who have pending an application for retirement. No waivers will be granted.

(16) Persons who are on a retired status from the Regular Army or Air Force, whether for disability or length of service. No waivers will be granted.

(17) Persons receiving disability pension or compensation from the Veterans' Administration, unless such pension or compensation is waived by the individual at time of enlistment.

(18) Persons receiving retired or retainer pay from the Navy, Marine Corps, or Coast Guard. No waivers will be granted.

(19) Selective Service registrants who have received orders from their local board to report for preinduction physical and mental examinations, or to report for induction, unless the order has been canceled and release is obtained from the local Selective Service Board.

(20) Applicants who admit or whose available records show that they have at any time engaged in disloyal or subversive activities.

(21) Applicants who refuse to sign the Loyalty Certificate for Personnel of the Armed Forces (DD Form 98). No waivers will be granted.

§ 571.3 *Periods and grades*—(a) *Periods of enlistment*—(1) *Regular Army.* (i) Enlistments in the Regular Army are authorized for 3, 4, 5, or 6 years at the option of the individual enlisting. In addition, male applicants who have completed a 1-year enlistment in the Army of the United States may enlist in the Regular Army for a 2-year period. Two-year enlistees incur the same Reserve service obligations as 21-month enlistees and are required to execute the certificate prescribed. Enlistment of females for a period less than 3 years is not authorized.

(ii) In addition to the options prescribed in subdivision (i) of this subparagraph, enlistments are authorized in the Regular Army for 21 months for male applicants who are between the ages of 19 and 26 and who have not heretofore served for more than 1 year in the Armed Forces prior to June 24, 1948, or more than 90 days between December 7, 1941 and September 12, 1945, or three years or more at any time. All enlistments under this option will be made for Regular Army Unassigned. Enlistees will incur the following service obligation, acknowledgement of which will be made by executing the certificate prescribed:

(*a*) They will be required to complete 21 months' active service.

(*b*) Thereafter, if qualified, they will be transferred to a Reserve component and required to serve therein for a period of 5 years after such transfer unless discharged earlier, except that, if they serve satisfactorily on active duty in the Army under a voluntary extension of one or more years, or in an organized unit of a Reserve component for a period of at least 36 months, they will be relieved from further liability to serve in any Reserve component except in time of war or national emergency declared by Congress.

(2) *Air Force.* (i) Enlistment in the Air Force is authorized for 4, 5, or 6 years at the option of the individual enlisting. These periods are applicable to all applicants except Air Force personnel who reenlist within 30 days from date of discharge.

(ii) Enlisted personnel who reenlist in the Air Force within 30 days from date of discharge from the Air Force are authorized to reenlist for 3, 4, 5, or 6 years at the option of the individual reenlisting.

(b) *Grades.* Individuals will be enlisted in the Regular Army and Air Force in grades commensurate with their training and experience as specifically authorized in applicable Army or Air Force regulations.

§ 571.4 *Choice of assignment*—(a) *Regular Army*—(1) *Males.* Men who enlist or reenlist in the Regular Army for 3, 4, 5, or 6 years are authorized certain initial assignment choices which are published in separate directives from time to time by the Department of the Army. Men who enlist in the Regular Army for any period less than 3 years

and those who reenlist in the Regular Army for an unspecified period of time will not be given any choice of assignment and will be enlisted for Regular Army unassigned.

(2) *Females.* Women who enlist or reenlist in the Regular Army will be enlisted for WAC unassigned only, with no choice of initial assignment.

(b) *Air Force.* Individuals who enlist or reenlist in the Air Force will be enlisted for Air Force unassigned.

§ 571.5 *Transportation of accepted applicants.* (a) Transportation and subsistence will be furnished to an applicant only when he has been tentatively accepted for enlistment, or when recalled for enlistment after name is reached on the waiting list.

(b) Return transportation and subsistence from recruiting main stations to point of initial acceptance will be furnished in accordance with existing regulations to rejected applicants and to those acceptable applicants who cannot be enlisted at the time. Return transportation will not be furnished an applicant for enlistment who is rejected because of disqualification concealed by him at time of acceptance as an applicant.

(c) Government transportation and meals or meal tickets will not be furnished from recruiting station to recruiting main station or other place of physical examination for applicants who have been discharged from last active service by reason of physical disability. Such applicants desiring enlistment will be informed that they must defray their own expenses in connection with travel for physical examination. (This paragraph does not apply to combat-wounded veterans applying for enlistment under special regulations.)

(d) Female applicants for enlistment from civilian life are required to apply for enlistment at recruiting main stations and transportation at Government expense will not be furnished to them from recruiting stations to recruiting main stations until they have been finally accepted for enlistment.

[SEAL] EDWARD F. WITSELL,
Major General, U. S. A.,
The Adjutant General.

[F. R. Doc. 50-9549; Filed, Oct. 27, 1950; 8:49 a. m]

TITLE 32A—NATIONAL DEFENSE, APPENDIX

Chapter I—National Production Authority, Department of Commerce

[NPA Order M-5]

PART 26—ALUMINUM

This order is found necessary and appropriate to promote the national defense and is issued pursuant to the authority of section 101 of the Defense Production Act of 1950. In the formulation of this order there has been consultation with industry representatives, including trade association representatives, and consideration has been given to their recommendations.

Sec.

AUTHORITY: §§ 26.1 to 26.13 issued under sec. 704, Pub. Law 774, 81st Cong. Interpret or apply sec. 101, Pub. Law 774, 81st Cong.; sec. 101, E. O. 10161, Sept. 9, 1950, 15 F. R. 6105.

§ 26.1 *What this part does.* This part applies particularly to primary and secondary producers, fabricators, distributors and jobbers of aluminum and provides rules for placing, accepting, and scheduling rated orders for aluminum. Its purpose is to make possible maximum production of aluminum by reducing to a minimum disruption of normal distribution and by providing equitable distribution of rated orders among all aluminum producers and fabricators and all distributors and jobbers of aluminum. It supplements Part 11 of this chapter (NPA Reg. 2), but only those provisions of Part 11 which are contradictory to this part are superseded, and all other provisions of that part continue to apply to the aluminum industry.

§ 26.2 *Aluminum forms and products to which this part applies.* This part applies to the following forms and products of aluminum:

Rod and bar.
Wire (under ⅜").
Cable (electrical transmission only).
Rivets.
Forgings and pressings (before machining).
Impact extrusions.
Castings.
Rolled structural shapes (angles, channels, zees, tees, etc.).
Extruded shapes.
Sheet, strip and plate.
Slugs.
Foil.
Tubing.
Tube blooms.
Powder (including atomized, granular, flake, paste and pigment).
Ingot, pig, billets, slabs.

§ 26.3 *Required delivery dates.* A rated order for aluminum in the forms listed in § 26.2 must specify shipment on a particular date or during a particular month, which in no case may be earlier than required by the person placing the order. The producer of aluminum must schedule the order for shipment within the requested month as close to the requested shipment date as is practicable considering the need for maximum production.

§ 26.4 *Rejection of rated orders.* Producers and fabricators of aluminum in the forms listed in § 26.2 need not accept a rated order which is received less than 60 days prior to the first day of the month in which shipment is requested, unless specifically directed to accept the order by the National Production Authority.

§ 26.5 *Limitations for acceptance of rated orders.* Subject to the tonnage limitation stated in § 26.6 and unless specifically directed by the National Production Authority:

(a) In order to make provision for a supply of metal to independent fabricators of aluminum, producers of primary aluminum shall accept rated orders from such fabricators up to 6½ percent of their scheduled production each month of primary pig and ingot;

(b) No aluminum producer or fabricator shall be required to accept rated orders for the products listed below for shipment in any one month in excess of the following percentages of his average monthly shipments of such products during the first eight months of 1950:

	Percent
Sheet, plate and strip	25
Extrusions and tubing	35
Rolled shapes	15
Rod, bar, wire and cable	15
Forgings and pressings	40
Castings	20
Secondary ingots	25
All other mill products, each	20

§ 26.6 *Total tonnage limitation for acceptance of rated orders.* Unless specifically directed by the National Production Authority:

(a) No producer of primary aluminum shall be required to accept rated orders for shipment in any one month of a total tonnage of aluminum products, including pig and ingot, in excess of 25 percent of his scheduled production in terms of total primary pig tonnage for that month; no producer of secondary aluminum shall be required to accept rated orders for shipment in any one month of a total tonnage of aluminum products, including ingots, in excess of 25 percent of his scheduled production in terms of total ingot tonnage for that month;

(b) No fabricator of aluminum shall be required to accept rated orders for shipment in any one month of a total tonnage of aluminum products in excess of 25 percent of his average monthly shipments during the first eight months of 1950.

§ 26.7 *Distribution and jobbers.* Unless specifically directed by the National Production Authority, no distributor or jobber of aluminum products shall be required to accept rated orders for shipment in any one month of a total tonnage of aluminum products in excess of 25% of the products available to him during such month.

§ 26.8 *Scheduled programs.* The National Production Authority will from time to time approve scheduled programs calling for the production and delivery of aluminum products for stated purposes over specified period of time. Upon approval of major programs of this type, supplements to this part will be issued describing such programs and specifying the manner in which they are to be carried out by the Aluminum Industry. Thereafter, directives will be issued to individual concerns establishing schedules for their participation in such programs. Such directives shall be complied with

by the recipients in accordance with the terms thereof, unless otherwise directed by the National Production Authority.

§ 26.9 *NPA assistance in placing rated orders.* Any person who is unable to place a rated order for aluminum due to the limitations imposed by §§ 26.5, 26.6, or 26.7 should apply to the National Production Authority, Light Metals Division, Washington 25, D. C., Ref. M-5, specifying the producers, fabricators, distributors or jobbers who refused to accept the order. The National Production Authority will arrange to assist him in locating sources of supply.

§ 26.10 *Adjustments and exceptions.* Any person affected by any provision of this part may file a request for adjustment or exception upon the ground that such provision works an unreasonable hardship upon him not suffered generally by others in the same trade or industry or that its enforcement against him would not be in the interest of national defense. Each request shall be in writing and shall be set forth all pertinent facts and the nature of the relief sought, and shall state the reasons why denial of the request could result in undue and exceptional hardship.

§ 26.11 *Communications.* All communications concerning this part shall be addressed to National Production Authority, Washington 25, D. C., Ref: M-5.

§ 26.12 *Reports.* Persons subject to this part shall make records and submit such reports to the National Production Authority as it shall require, subject to the terms of the Federal Reports Act.

§ 26.13 *Violations.* Any person who wilfully violates any provisions of this part or any other order or regulation of the National Production Authority or wilfully conceals a material fact or furnishes false information in the course of operation under this part is guilty of a crime and upon conviction may be punished by fine or imprisonment or both. In addition, administrative action may be taken against any such person to suspend his privilege of making or receiving further deliveries of materials or using facilities under priority or allocation control and to deprive him of further priorities assistance.

This part shall take effect on October 27, 1950.

Dated: October 26, 1950.

NATIONAL PRODUCTION AUTHORITY,
[SEAL] W. H. HARRISON,
Administrator.

[F. R. Doc. 50-9636; Filed, Oct. 27, 1950; 12:01 p. m.]

Chapter VI—National Security Resources Board

PART 600—ISSUANCE OF NECESSITY CERTIFICATES UNDER SECTION 124A OF THE INTERNAL REVENUE CODE

The following regulation is hereby prescribed by the Chairman of the National Security Resources Board, with the approval of the President, pursuant to the authority contained in Executive Order 10172, dated October 12, 1950.

Sec.
600.1 Definitions.
600.2 Criteria for determination of necessity and of portion attributable to defense purposes.
600.3 Procedures and responsibilities.
600.4 Exercise of powers of certifying authority.
600.5 Amendment of this part.

AUTHORITY: §§ 600.1 to 600.5 issued under sec. 124A, as added by sec. 216, Pub. Law 814, 81st Cong., E. O. 10172, Oct. 12, 1950, 15 F. R. 6929.

§ 600.1 *Definitions.* As used throughout this part:

(a) "Emergency facility" means any facility, land, building, machinery or equipment, or any part thereof, the construction, reconstruction, erection, installation, or acquisition of which was completed after December 31, 1949, and with respect to which a Necessity Certificate has been made.

(b) "Emergency period" means the period beginning January 1, 1950, and ending on the date on which the President proclaims that the utilization of a substantial portion of the emergency facilities with respect to which Necessity Certificates have been made is no longer required in the interest of national defense.

(c) "Certifying authority" means the Chairman of the National Security Resources Board or his duly authorized representative.

(d) "Necessity Certificate" means a certificate made pursuant to section 124A of the Internal Revenue Code, certifying that the construction, reconstruction, erection, installation, or acquisition of the facilities referred to in the certificate is necessary in whole or in part in the interest of national defense during the emergency period, and certifying the portion thereof attributable to defense purposes.

(e) "Materials" means raw materials, articles, commodities, products, supplies and components.

(f) "Taxpayer" means a person as defined in section 3797 (a) (1) of the Internal Revenue Code.

§ 600.2 *Criteria for determination of necessity and of portion attributable to defense purposes.* Determination will be made as to whether the construction, reconstruction, erection, installation, or acquisition of the facility (in whole or in part) is necessary in the interest of national defense during the emergency period and what portion of the facility is attributable to defense purposes.

(a) *Materials or services required for national defense.* In making such determination, consideration will be given to whether the material or service to be produced with the proposed emergency facility is required in whole or in part in the interest of national defense during the emergency period. A material or service may be found to be so required if it is directly required for the Armed Services of the United States or auxiliary personnel, for civil defense, for the Atomic Energy Commission, or for any operations or activities in connection with the Mutual Defense Assistance Act; or if it is in the nature of materials or services necessary for the production of materials or services directly required in the interest of national defense during the emergency period; or if it is in the nature of materials or services necessary for the operation of the national defense program; or if it is otherwise necessary in the interest of national defense.

(b) *Shortage of facilities for the production of materials or services required for national defense.* In making such determination, consideration will be given to whether at the time of the construction, reconstruction, erection, installation or acquisition of the facility, there is an existing or prospective shortage of facilities for the production of the materials or services which are to be produced by the facility sought to be certified. In such determination, consideration will be given to an over-all shortage, the necessity for and adequacy of facilities or materials or services for a particular region, the necessity for stand-by capacity, and other factors contributing to or threatening a shortage of facilities for producing such materials or services.

(c) *Economic usefulness of the facility.* In determining the portion of the facility attributable to defense purposes, consideration will be given to the probable economic usefulness of the facility for other than defense purposes after five years.

(d) *Acquired facilities, replacements, and land.* (1) Acquired facilities previously constituting the productive assets of a going concern, and second-hand facilities, will not be certified unless: (i) Clear prospect of a substantial increase in the usefulness of such facilities for national defense exists and such increase cannot be obtained by other practical means; or (ii) substantial loss of usefulness for national defense would probably result in the absence of such acquisition.

(2) Replacements will not be certified if they would have been made, at or about the time made, regardless of the emergency.

(3) Land will not be certified unless its acquisition is directly related to the production, storage, transportation or protection of supplies necessary in the interest of the national defense.

(e) *Other considerations.* In making such determination, guidance to the maximum extent will be obtained from the following additional considerations: (1) assurance of fair opportunity for participation by small business; (2) the promotion of competitive enterprise; (3) the competence, performance record, if any, and other factors bearing upon the ability of the applicant to manage effectively the proposed expanded facilities; (4) location of the facility with due regard to military security; (5) the availability of manpower, housing, community facilities, transportation, and other elements of production; and (6) methods of financing.

§ 600.3 *Procedures and responsibilities.*—(a) *Application form.* Formal application filed after the effective date of this part shall conform to the standard form prescribed by the certifying authority, and shall be executed in the manner and by the person prescribed by the form. The standard form of appli-

cation for a Necessity Certificate with accompanying instructions may be obtained from the National Security Resources Board, Washington 25, D. C., or from the Department of Commerce or any of its field offices.

(b) *Filing of application.* All applications for Necessity Certificates filed under the terms of this part shall be filed with the National Security Resources Board in Washington, D. C., and shall be deemed to be filed when received at that Board. If the application or its filing would involve the disclosure of information which has a security classification, the applicant should check with the appropriate government agency with whom the applicant has classified contract relations for instruction or arrangements concerning the handling of such documents or data prior to the filing of such application with the National Security Resources Board.

(c) *Time of filing application.* (1) Applications for Necessity Certificates for facilities upon which construction, reconstruction, erection or installation is begun, or which are acquired, after September 23, 1950, must be filed within six (6) months after the beginning of construction, reconstruction, erection or installation, or the date of acquisition of such facilities.

(2) Applications for Necessity Certificates for facilities upon which construction, reconstruction, erection or installation was begun or which were acquired on or before September 23, 1950, must be filed on or before March 23, 1951.

(d) *Modification of filing requirements.* The time and place for filing applications for Necessity Certificates may be changed by the certifying authority. Such change shall be effective upon publication in the Federal Register.

(e) *Referral of application.* Each application, after acknowledgement, will be referred to that agency or officer of the Government according to its respective assigned responsibilities pursuant to the Defense Production Act of 1950.

(f) *Responsibilities of agencies and officers other than certifying authority.* Delegate agencies and officers shall be responsible for making a report and recommendation for specific action to the certifying authority regarding each application. Such report and recommendation shall be based upon a thorough examination and investigation conducted by the delegate agency or officer or by other competent government agencies or officers.

(g) *Action by the certifying authority.* After consideration of relevant factors, including but not limited to the report and recommendation of the delegate agencies and officers, the certifying authority will make the appropriate decision regarding the application.

(h) *Necessity Certificates.* Upon issuance of a Necessity Certificate, it will be forwarded to the Commissioner of Internal Revenue and will constitute conclusive evidence of certification by the certifying authority that the facilities therein described are necessary in the interest of national defense to the extent certified. The certifying authority will not certify the accuracy of the cost of any facility or of any date relative to the construction, reconstruction, erection, installation or acquisition thereof. It will be incumbent upon taxpayers electing to take the amortization deduction to establish to the satisfaction of the Commissioner of Internal Revenue the identities of the facilities, the costs thereof and the dates relative thereto.

(i) *Further description after certification.* Where after the completion of a construction, reconstruction, erection, installation or acquisition of an emergency facility, the taxpayer finds that the description or cost of any facility appearing in the Necessity Certificate materially varies from the actual description or cost of the facility, a statement may be filed by the taxpayer with the certifying authority setting forth the correct description or cost of the emergency facility actually constructed, reconstructed, erected, installed or acquired. A copy of the statement will be forwarded by the certifying authority to the Commissioner of Internal Revenue, provided the description or cost in the opinion of the certifying authority is within the scope of the original certification, and when so forwarded, the statement will have the effect of an amendment of the original certificate.

(j) *Cancellation or amendment of Necessity Certificate.* The certifying authority may (1) cancel any Necessity Certificate where it has been obtained by fraud or misrepresentation or has been issued through error or inadvertence, or (2) amend any Necessity Certificate for sufficient cause shown.

§ 600.4 *Exercise of powers of certifying authority.* Any actions taken in exercise of the powers and authority vested in the Chairman of the National Security Resources Board by E. O. 10172, October 12, 1950 (15 F. R. 6929) may be taken in the name of the National Security Resources Board, countersigned or attested by the Chairman's authorized representative.

§ 600.5 *Amendment of this part.* This part may be amended by the Chairman of the National Security Resources Board with the approval of the President.

W. STUART SYMINGTON,
Chairman, National Security Resources Board.

Approved: October 26, 1950.

HARRY S. TRUMAN,
The White House.

[F. R. Doc. 50-9607; Filed, Oct. 26, 1950; 1:43 p. m.]

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

Chapter I—Coast Guard, Department of the Treasury

[CGFR 50-28]

LIGHTS FOR NONDESCRIPT VESSELS; MARINE REGATTAS OR MARINE PARADES

A notice regarding proposed changes in the Pilot Rules for Inland Waters and the Regulations for Marine Regattas or Marine Parades was published in the FEDERAL REGISTER dated August 25, 1950, 15 F. R. 5706, 5708, as Items I and XX on the Agenda to be considered by the Merchant Marine Council; and a public hearing was held by the Merchant Marine Council on September 20, 1950, at Washington, D. C.

The purpose for the new regulation to be added to 33 CFR 80.16 is to require lights to be displayed on nondescript vessels, such as pontoons, being towed or pushed in the harbors, rivers, or other inland waters of the United States which are to be the same as for scows. This new regulation is to adequately describe the lights required on nondescript vessels not otherwise provided for by the regulations.

The purpose for revising the regulations in 33 CFR Part 100 regarding marine regattas or marine parades is to provide a means whereby special regulations may be issued, if necessary, to assure safety of life on the navigable waters immediately prior to, during, and immediately after the marine regatta or marine parade, as well as to require under certain conditions the submission in advance of detailed plans of the proposed marine regatta or marine parade to the Commander of the Coast Guard District in which the event is proposed to be held.

By virtue of the authority vested in me as Commandant, United States Coast Guard, by Treasury Order No. 120, dated July 31, 1950, to promulgate regulations in accordance with the statutes cited with the regulations below, the following amendments to the regulations are prescribed which shall become effective ninety (90) days after date of publication of this document in the FEDERAL REGISTER:

Subchapter D—Navigation Requirements for Certain Inland Waters

PART 80—PILOT RULES FOR INLAND WATERS

LIGHTS FOR CERTAIN CLASSES OF VESSELS

Section 80.16 is amended by adding a new paragraph (i), reading as follows:

§ 80.16 *Lights for barges, canal boats, scows, and other nondescript vessels on certain inland waters on the Atlantic and Pacific Coasts.* * * *

(i) Other vessels of nondescript type not otherwise provided for in this section shall exhibit the same lights that are required to be exhibited by scows by this section.

(Sec. 1, 35 Stat. 69, as amended; 46 U. S. C. 454. Interprets or applies sec. 2, 30 Stat. 102, as amended; 33 U. S. C. and Sup., 157)

Subchapter G—Marine Regattas or Marine Parades

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS DURING MARINE REGATTAS OR MARINE PARADES

Part 100 is amended to read as follows:

Sec.
100.01 Definition.
100.05 Submission of plans for marine regattas or marine parades to the Coast Guard.

Sec.
100.10 Procedure of District Commander upon receipt of plans.
100.15 Special local regulation.
100.20 Patrol of the marine regatta or marine parade.
100.25 Establishment of aids to navigation.

AUTHORITY: §§ 100.01 to 100.25 issued under sec. 1, 35 Stat. 69, as amended; 46 U. S. C. 454.

§ 100.01 *Definition.* The term "marine regatta" or "marine parade" for the purpose of the regulations in this part, is defined to be an organized water event of limited duration which is conducted according to a prearranged schedule and in which general public interest is manifested.

§ 100.05 *Submission of plans for marine regattas or marine parades to the Coast Guard.* (a) Organizations planning to hold marine regattas or marine parades, which, by their nature, circumstances, or location will introduce extra or unusual hazards to the safety of life on navigable waters shall submit detailed plans of such marine regattas or marine parades to the Commander of the Coast Guard District in which it is planned to hold them.

(b) The detailed plans shall include the following:

(1) Name and address of organization.

(2) Nature and purpose of the event.

(3) Information as to general public interest.

(4) Estimated number and types of watercraft participating in the event.

(5) Estimated number and types of spectator watercraft.

(6) A time schedule and description of events.

(7) A section of chart or scale drawing showing the boundaries of the event, various water courses or areas to be utilized by participants, officials, and spectator craft.

(c) Detailed plans shall be submitted no less than 15 days prior to the start of a marine regatta or marine parade unless the marine regatta or marine parade is of such a nature as to involve limitations on the use of a portion of the navigable waters by other interested parties, in which event the plans should be submitted not less than 60 days prior to the start of the proposed marine regetta or marine parade.

§ 100.10 *Procedure of District Commander upon receipt of plans.* (a) The Commander of a Coast Guard District who receives detailed plans of a proposed marine regatta or marine parade to be held upon the navigable waters within his district shall study them to determine whether the proposed marine regatta or marine parade may be held in the proposed location with safety to life on the navigable waters. As an aid to such study, the District Commander may, if he deems it necessary, hold a public hearing to determine the views of all persons interested in, or who will be affected by, the marine regatta or marine parade.

(b) Upon the completion of his study of the plans, the District Commander will notify the organization which submitted the plans:

(1) That the plans are approved, and the nature of the special local regulations, if any, which he will promulgate pursuant to § 100.15; or,

(2) That the interest of safety of life on the navigable waters require specific change or changes in the plans before they can be approved; or,

(3) That the plans are not approved, with reasons for such disapproval.

§ 100.15 *Special local regulations.* (a) The Commander of a Coast Guard District, after approving the plans for the holding of a marine regatta or marine parade within his district, is authorized to promulgate such special local regulations as he deems necessary to insure safety of life on the navigable waters immediately prior to, during, and immediately after the approved marine regatta or marine parade. Such regulations may include a restriction upon, or control of, the movement of vessels through a specified area immediately prior to, during, and immediately after the marine regatta or marine parade.

(b) After approving the plans for the holding of a marine regatta or marine parade upon the navigable waters within his district, and promulgating special regulations thereto, the Commander of a Coast Guard District shall give the public full and adequate notice of the dates of the marine regatta or marine parade, together with full and complete information of the special local regulations, if there be such. Such notice should be published in the local notices to mariners.

(c) The special local regulations referred to in paragraph (a) of this section, when issued and published by the Commander of a Coast Guard District, shall have the status of regulations issued pursuant to the provisions of section 1 of the act of April 28, 1908 (46 U. S. C. 454), as amended.

§ 100.20 *Patrol of the marine regatta or marine parade.* (a) The Commander of a Coast Guard District in which a regatta or marine parade is to be held may detail, if he deems the needs of safety require, one or more Coast Guard vessels to patrol the course of the regatta or marine parade for the purpose of enforcing not only the special local regulations but also for assistance work and the enforcement of laws generally.

(b) The Commander of a Coast Guard District may also utilize any private vessel or vessels to enforce the special local regulations governing a regatta or marine parade provided such vessel or vessels have been placed at the disposition of the Coast Guard pursuant to 14 U. S. C. 826 for such purpose by any member of the Coast Guard Auxiliary, or any corporation, partnership, or association, or by any State or political subdivision thereof. Any private vessel so utilized shall have on board an officer or petty officer of the Coast Guard who shall be in charge of the vessel during the detail and responsible for the law enforcement activities or assistance work performed by the vessel during such detail. Any private vessel so utilized will display the Coast Guard ensign while engaged in this duty.

§ 100.25 *Establishment of aids to navigation.* The Commander of a Coast Guard District will establish and maintain only those aids to navigation as he deems necessary to assist in the observance and enforcement of the special local regulations issued by him. Such aids to navigation will be in accordance with § 62.01-35 of this chapter. All other aids to navigation incidental to the holding of a marine regatta or marine parade shall be considered as private aids to navigation coming within the purview of § 66.01 of this chapter.

Dated: October 24, 1950.

[SEAL] MERLIN O'NEILL,
Vice Admiral, U. S. Coast Guard, Commandant.

[F. R. Doc. 50-9576; Filed, Oct. 27, 1950; 8:55 a. m.]

Chapter II—Corps of Engineers, Department of the Army

PART 202—ANCHORAGE REGULATIONS

MISCELLANEOUS AMENDMENTS

Correction

In F. R. Document 50-9191 appearing on page 6988, of the issue for Thursday, October 19, 1950, make the following change in the sixth line of paragraph (f): The reference to "240 yards" should read "480 yards".

TITLE 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[Docket No. 9732]

PART 1—PRACTICE AND PROCEDURE

LICENSEES IN THE DOMESTIC PUBLIC LAND MOBILE RADIO SERVICES; ANNUAL REPORT FORM

At a session of the Federal Communications Commission held at its offices in Washington, D. C. on the 18th day of October 1950;

The Commission, having under consideration its notice of proposed rule making adopted herein on July 6, 1950, proposing promulgation of an annual report form applicable to licensees in the domestic public land mobile radio services and Amendment of Part 1 of its rules;

It appearing, that the period in which interested persons were afforded an opportunity to submit comments expired on August 15, 1950; and that the only comment filed on behalf of interested persons did not oppose the adoption of the proposed report form or the proposed amendment, but suggested certain modifications therein which have been adopted; and

It further appearing, that authority for the promulgation of such report form and rule amendment is contained in sections 4 (i), 219, 303 (j), 303 (r), and 308 (b) of the Communications Act of 1934, as amended;

It is ordered, That the Annual Report Form,[1] designated as "F. C. C. Form L," is adopted for use by licensees in the domestic public land mobile services who do not report to the Commission on Annual Report Form M; and

It is further ordered, That, effective thirty days after publication hereof in the FEDERAL REGISTER, Part 1, Rules Relating to Practice and Procedure of the Commission's rules is amended by adding a new subparagraph to paragraph (a) of § 1.544, *Annual financial reports*, as follows:

(8) Form L (licensees in the domestic public land mobile radio services who do not report to the Commission on Annual Report Form M).

(Sec. 4, 48 Stat. 1066, as amended; 47 U. S. C. 154. Interprets or applies secs. 219, 303, 308, 48 Stat. 1077, 1082, as amended, 1084; 47 U. S. C. 219, 303, and 308)

Adopted: October 18, 1950.

Released: October 19, 1950.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 50-9563; Filed, Oct. 27, 1950; 8:51 a. m.]

[Docket No. 9581]

PART 3—RADIO BROADCAST SERVICES

INSPECTION OF TOWER LIGHTS AND ASSOCIATED CONTROL EQUIPMENT AND DISCONTINUANCE OF OPERATION

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 18th day of October 1950;

The Commission having under consideration a proposal to amend Part 3 of the Commission's rules and regulations governing radio broadcast services to make changes in the rules relating to inspection of tower lights and associated control equipment and discontinuance of operation and to correct cross references to other sections; and

It appearing, that notice of proposed rule making setting forth the proposed new rules and amendments was issued by the Commission on February 8, 1950, and was duly published in the FEDERAL REGISTER, which notice provided that interested parties might file statements or briefs with respect to the said new rules and amendments on or before March 8, 1950; and

It further appearing that no statements or briefs with respect to the proposed new rules and amendments have been filed; and

It further appearing, that the new rules and amendments as proposed would have required that any observed failure of antenna tower lights, not corrected within 30 minutes, be reported to the Civil Aeronautics Administration; that the Commission has been informed by the Civil Aeronautics Administration that it is unnecessary that partial failure of the tower lights be reported to it unless such failure involves a code or rotating beacon light or the top light of a tower; and that therefore the requirements of the new rules and amendments may be relaxed to that extent; and

It further appearing, that in view of the above change in the requirements relating to the reporting of tower light failure it is also necessary that §§ 3.181 (c) (3) (iv), 3.281 (c) (3) (iv), 3.581 (c) (3) (iv), and 3.681 (c) (3) (iv) which relate to the logging of such reports be likewise amended to conform thereto; and

It further appearing, that adoption of the proposed new rules and amendments with the changes noted above and certain other minor changes will improve the uniformity and consistency of the Commission's rules relating to the several radio services, correct erroneous cross references and promote the public safety;

It is ordered, That effective November 28, 1950, Part 3 of the Commission's rules and regulations is amended as set forth below.

(Sec. 4, 48 Stat. 1066, as amended; 47 U. S. C. 154. Interprets or applies sec. 303, 48 Stat. 1082, as amended; 47 U. S. C. 303)

Released: October 19, 1950.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

Amendments to Part 3 of the Commission's rules and regulations governing radio broadcast services.

1. A new section, numbered § 3.65, is added, reading as follows:

§ 3.65 *Inspection of tower lights and associated control equipment.* The licensee of each station which has an antenna or antenna supporting structure(s) required to be illuminated pursuant to the provisions of section 303 (q) of the Communications Act of 1934, as amended, shall:

(a) Make a visual observation of the tower lights at least once each 24 hours to insure that all lights are functioning properly as required.

(b) Report immediately by telephone or telegraph to the nearest airways communication station or office of the Civil Aeronautics Administration any observed failure of a code or rotating beacon light or top light not corrected within 30 minutes, regardless of the cause of such failure. Further notification by telephone or telegraph shall be given immediately upon resumption of the required illumination.

(c) Inspect at intervals of at least once each three months all automatic and mechanical control devices associated with flashing or rotating beacons to insure that such apparatus is functioning properly as required.

2. Section 3.270 (c) is amended to read the same as new § 3.65 (c) above.

3. Section 3.570 (c) is amended to read the same as new § 3.65 (c) above.

4. Section 3.669 (c) is amended to read the same as new § 3.65 (c) above.

5. A new section numbered § 3.163, is added, reading as follows:

§ 3.163 *Discontinuance of operation.* The licensee of each station shall notify the Commission in Washington, D. C., and the Engineer in Charge of the district where such station is located of permanent discontinuance of operation at least two days before operation is discontinued. The licensee, shall, in addition, immediately forward the station license and other instruments of authorization to the Washington, D. C., office of the Commission for cancellation.

6. Section 3.271 is amended to read the same as new § 3.163 above.

7. Section 3.571 is amended to read the same as new § 3.163 above.

8. Section 3.670 is amended to read the same as new § 3.163 above.

9. The footnote to the word "Definition" appearing at the head of Subpart A of Part 3 is amended to read as follows: "Other definitions which may pertain to standard broadcast stations are included in the Communications Act of 1934, as amended, and in §§ 2.1 and 2.102 of this chapter."

10. The footnote to § 3.41 is amended so that the reference in parentheses reads: "(See §§ 3.15 (c) and 3.15 (d))."

11. The second footnote to § 3.52 is amended so that the reference in parentheses reads: "See § 3.15 (c) and § 3.15 (d))."

12. Section 3.164 is amended by deleting the words: "(See §§ 2.51 and 2.52)."

13. Section 3.165 is amended by deleting the reference in parentheses.

14. Section 3.181 (c) is amended to read:

(c) Where an antenna and antenna supporting structure(s) is required to be illuminated the licensee shall make entries in the radio log appropriate to the requirements of § 3.65 as follows:

* * * * *

(3) In the event of any observed failure of a tower light:

* * * * *

(iv) Airways Communication Station (CAA) notified of the failure of any code or rotation beacon light or top light not corrected within 30 minutes and the time such notice was given.

* * * * *

15. Section 3.281 (c) (3) (iv) is amended to read the same as amended § 3.181 (c) (3) (iv) above.

16. Section 3.581 (c) (3) (iv) is amended to read the same as amended § 3.181 (c) (3) (iv) above.

17. Section 3.681 (c) (3) (iv) is amended to read the same as amended § 3.181 (c) (3) (iv) above.

[F. R. Doc. 50-9565; Filed, Oct. 27, 1950; 8:51 a. m.]

[Docket No. 9648]

PART 6—PUBLIC RADIOCOMMUNICATION SERVICES (OTHER THAN MARITIME MOBILE)

MEMORANDUM OPINION AND ORDER REGARDING ESTABLISHMENT OF POLICY EFFECTING 60 KC. ADJACENT CHANNEL FREQUENCY ASSIGNMENTS

On May 12, 1950, the Commission adopted and released a notice of proposed rule-making in the above indicated matter and comments thereon

[1] Filed as part of the original document.

were required to be filed on or before June 19, 1950. Various comments have been received by the Commission as more fully set forth hereinafter.

The rules and regulations of the Commission presently applicable to this service provide frequencies for assignment to the miscellaneous common carriers, among others, on the basis of 60 kc. channel separation (§ 6.401). The notice of proposed rule-making herein was none the less deemed to be appropriate because of the fact that the Commission's policy has been to assign frequencies to the miscellaneous carriers on the basis of 120 kc. channel spacing in the same geographical area. This policy and practice stemmed from a statement in the Commission's Report of April 27, 1949, terminating the General Mobile proceedings (Docket No. 8658, et al.),[1] and was predicated upon the recognition of the fact that, in April 1949, equipments capable of satisfactory adjacent channel operation were not available to such carriers. However, it was also recognized that such equipments could reasonably be expected to become available at some future time. For that reason, the frequencies for the service were specified in the rules as having 60 kc. separation. The issuance of the instant notice of proposed rule-making was predicated on the assumption that such improved equipments were now generally available.

Eleven comments have been received favoring the Commission's proposal. Ten of these comments were from miscellaneous carrier applicants, permittees or licensees in the service and one was from a manufacturer of equipment, Motorola, Inc. Motorola's approval is qualified with certain conditions, including, for example, the suggestion that a 7-year period of amortization be provided for existing equipment, etc. Three comments have been received opposing the proposal. One of these comments was filed by an attorney on behalf of a group of 22 applicants, permittees or licensees in the service; another was filed on behalf of United States Independent Telephone Association; and the third was filed in behalf of an equipment manufacturer, Federal Telephone and Radio Corporation.

The statements in objection may be summarized as follows:

1. The statement on behalf of the group of 22 applicants alleges:

(a) The proposal is based upon a fundamental assumption that has not been satisfactorily established, namely, that "equipments capable of satisfactory interference-free operation on adjacent channels (60 kc. separation) in the 152–162 Mc band are now available".

(b) The proposal in any event would cause serious financial injury to the licensed carriers and those of their subscribers who would be obliged to modify or replace existing equipments before the useful life of the equipment has been exhausted.

(c) The proposal, *if it contemplates the authorization of four different carriers in the same city or area*, would also cause serious economic injury to all carriers without exception, would effectually eliminate any healthy competition between the telephone and miscellaneous common carrier types of service, and would prevent the sound planning and growth of the miscellaneous common carriers operating in all our larger cities. [Italics supplied.]

The comment concludes by suggesting this counter-proposal:

(1) A policy of limiting the number of miscellaneous carriers to be authorized in any single area to a total of two in the *absence of special circumstances.*

(2) A policy of permitting all equipment purchased to be used for a period of at least five years from date of purchase and thereafter if a channel 60 kc. removed has not been placed into operation by the same or a competitive carrier.

(3) A policy of assigning each authorized carrier a primary and secondary channel, the use of the secondary channel being conditioned only upon a showing of the need therefor and that the use of this second channel will not cause interference to equipments which are incapable of operation on 60 kc. separated channels and have been purchased less than five years ago. [Italics supplied.]

2. The statement of United States Independent Telephone Association is predicated on the premise that the adoption of the proposed policy would unnecessarily accelerate the rate of obsolescence of equipment now in use and would work a financial hardship on individual independent telephone company licensees. The Association requests that a reasonable period be provided for amortization of existing equipment.

3. The statement of Federal Telephone and Radio Corporation is predicated upon the assumption (a) that the adoption of the proposed policy will result, in every case, in increased competition between the miscellaneous carriers because the number of licensees in an area will be increased from 2 to 4 and (b) that the modification of existing equipment which would be necessitated by the adoption of the proposed policy would throw a substantial financial burden on existing carriers. This comment concludes by requesting withdrawal or postponement of the proposal.

None of the parties filing comments herein has requested oral argument on the proposal. Regardless of the absence of such a request, it is our practice to hear such argument where it appears necessary or desirable that we undertake such procedure before making a decision. However, in this case, it does not appear that oral argument would serve any useful purpose. The parties have clearly expounded their views in their comments. Moreover, a careful study of the comments shows that there is really no basic disagreement on the proposition of providing now for adjacent channel assignments. The adverse comments are, rather, concerned with such questions as whether, and to what extent, an amortization period should be established for the retirement of nonconforming equipments, and the policies to be followed in assigning to carriers the two additional channels which will be derived as a result of adoption of the policy.

With one exception, the parties herein do not dispute the statment in the subject notice of proposed rule-making concerning the present availability of equipments capable of satisfactory interference-free operation on adjacent channels (60 kc. separation) in the 152–162 Mc. band. The exception is the statement in opposition, filed on behalf of the group of 22 persons, which alleges that our fundamental assumption that such equipment is available "has not been satisfactorily established". However, apart from this bare statement of conclusion, no substantial current data or information in support thereof is offered. On the other hand, no equipment manufacturers have contested this assertion and we know that such equipment is presently in use.

The argument that the proposed change in policy should not be adopted because it would cast a financial burden on existing licensees through accelerated obsolescence of existing equipment must be carefully considered. To accept this argument as valid, in its broadest terms, would be to concede that we may never require progress in the more efficient use and operation of radio facilities. It is evident that, whenever changes and improvements in the radio art take place and whenever the adoption of such changes and improvements would appear to contribute substantially to the establishment of new, or betterment of existing, communication services, it is our duty to see that such improvements are utilized.[2] Since it is not reasonably to be expected that all the radio equipment in use will, at any single point of time, simultaneously wear out, at any point of time when we might seek to require a change in the standards or policies applicable to equipments in use some of the owners of existing equipments would necessarily be adversely affected thereby. However, the adverse effect upon those persons would be, if reasonably controlled, far less than the adverse effect which would result to our national interests and to the public at large if such necessary and required changes were suppressed or indefinitely postponed.

Thus, it is necessary that we examine the extent of the effect in each case and determine what would constitute reasonable control of this enforced and accelerated obsolescence. In some other instance where we have been faced with the necessity of requiring substantial changes in existing equipments, we have provided a period of time within which such equipments could be amortized. Typically, in the other cases, an entire service was required to make a change-over and the loss to the operators in that service was a tangible quantity definitely measurable in terms of the aggregate number of equipments in use. That is not this case.

The extent to which, and the time at which, obsolescence may be forced upon any existing miscellaneous carrier operator in this service by the adoption of

[1] "* * * The 152–162 Mc. allocation will enable the telephone companies to derive 6 channels through implementation of a system of 60 kc. adjacent channel operation (assuming such an operation is feasible engineering-wise), *while permitting the miscellaneous carriers to operate on 2 channels in the same geographical area on an interference-free basis (assuming 120 kc. channel spacing).*" [Italics supplied.] 14 F. R. 2277.

[2] See sections 1, 218 and 303 (g) of the Communications Act.

the proposed policy is not a matter of immediate concern in most cases. There is nothing in our proposal which would require all existing operators arbitrarily to change their equipments by any specific date. The effect of the adoption of our proposal will depend directly upon the extent to which, and the time at which, in each operator's locality, other systems may be authorized to operate 60 kcs. removed from existing assignments. Thus, if no additional systems are installed, no use will be made, in such areas, of the available adjacent channels and there would be no necessity for effecting changes in installed equipment for an indeterminate period of time. Where, on the other hand, it may appear that more systems than those already authorized are required in the public interest, convenience or necessity,[3] it may be necessary at once to require existing operators to accommodate themselves to satisfactory adjacent channel operation.

Further, it is significant to note that, in those cases where it may be reasonably expected that the adoption of our proposed policy may have an immediate and adverse effect upon existing operators, e. g., in such important urban centers as New York City, Los Angeles-San Diego, Houston, and the several other areas as to which it will be necessary for us to hold comparative hearings in order to determine which of many competing applications should be granted, the existing operators are now operating pursuant to experimental authorizations under which they have consciously and knowingly assumed the risk of such actions as are here proposed, as well as the risk that they may not ultimately be selected as regular licensees in the service.

Those opposing the proposal on behalf of the miscellaneous carriers seem to premise their argument on the assumption that competition in any area (regardless of its geographic size or population) between 2 miscellaneous carriers is acceptable and inevitable, but that competition between 4 such carriers in any area is unacceptable and untenable. We do not subscribe to either proposition of that assumption.

In adopting the instant decision, we do not prescribe any rule or policy to determine how many miscellaneous carriers may be authorized to operate in any given area. The exact delineation of those areas in which one or two systems might be authorized, as distinguished from those in which more than two might be required and permitted, is not a matter which is susceptible of general definition, but must rest upon a careful case-by-case determination. Indeed, even the adverse comment filed on behalf of the group of 22 persons recognizes this fact.[4]

[3] This contingency is reflected in an issue which has been included in each of the comparative application cases in the subject service already designated for hearing. The issue reads: "To determine the areas and populations which may be expected to receive service from any proposed station and the need for such service in the area proposed to be served."

[4] See item 1 of their counter-proposal, set forth above.

Where it appears appropriate, we may, on our own motion, raise questions on applications which propose competition to established services to determine, among other things, the need for additional service in an area and the possible effects of competition, etc. Likewise, permittees and licensees operating in areas where further competition is proposed may call such matters to our attention and request our consideration or formal action thereon.[5] To facilitate such procedure on the part of interested persons, we have, for some months past, issued weekly public notices listing applications received and applications processed in this service and we expect to continue that practice.

Moreover, at such times as may appear necessary and appropriate, interested licensees may file their own applications for the assignment of additional channels for their use. Thus, while no "secondary" channels are specifically reserved for existing operators, as proposed by one of the objectors herein (see item 3 of the counter-proposal quoted above), consideration may be given to such requests as each case may warrant.

In reaching our decision herein, we have also taken notice of the fact that the actual and potential demand by the public for this mobile service may require the allocation of even more frequencies to its use than are presently assigned.[6] Necessarily, therefore, existing allocations should be used to the utmost efficiency.

A word on the position taken by United States Independent Telephone Association is appropriate. The independent telephone industry appears to be unnecessarily concerned over the possible effects of our proposed policy on their operations. For the reasons stated above, it does not appear that any of these companies will be required to change equipments by any specific date. Since, typically, the independent companies have exclusive franchises to operate in the respective territories they serve, and since they have an exclusive telephone company frequency allocation in this service (see § 6.401 (a)), the necessity for going to adjacent channel operation, in the case of these companies, will be dictated solely by their individual need for expansion of service in any particular area beyond that which may be provided on an alternate channel basis.

In contrast to what we have said regarding the necessity for making changes now in equipments already installed, it should be carefully noted that, after the effective date hereof, we shall not issue authorizations for the installation of new or additional equipments in this service where such equipments are not capable of satisfactory operation on an adjacent channel basis, except where it may be shown that the service requirements of a particular area may not reasonably be expected to require the use of adjacent channels in the foreseeable future. Implementation of this exception will permit manufacturers, to some extent, to divest themselves of existing inventories of old equipment and may provide an outlet for some of the older type, but still serviceable equipment, forced out of use in other areas through the application of the policy set forth herein. Where outstanding authorizations cover equipments not yet purchased or installed, the permittees or licensees would be well advised to order and install appropriate new equipments, if that is possible.[7]

The Domestic Public Land Mobile Radio Service is still relatively young and undeveloped. The equipments installed and in use today may be only a small percentage of the aggregate which will be in use a few years hence. Thus, it would appear that any equipment changes required today would entail a far smaller economic burden to the owners thereof than would be the case later, and that changes foreseeable now, and susceptible of provision now, should be attained now.

For the reasons set forth above, and pursuant to the authority contained in sections 4 (i), 301 and 303 of the Communications Act of 1934, as amended, *It is ordered*, This 18th day of October 1950, that:

1. The foregoing Memorandum Opinion and the policies set forth therein are adopted for application to the Domestic Public Land Mobile Radio Services.

2. The effective date hereof shall be November 30, 1950.

(Sec. 4, 48 Stat. 1066, as amended; 47 U. S. C. 154. Interprets or applies secs. 301, 303, 48 Stat. 1081, 1082 as amended; 47 U. S. C. 301, 303).

Adopted: October 18, 1950.

Released: October 19, 1950.

FEDERAL COMMUNICATIONS COMMISSION,[8]

[SEAL] T. J. SLOWIE, *Secretary.*

[F. R. Doc. 50-9564; Filed, Oct. 27, 1950; 8:51 a. m.]

[Docket No. 9363]

PART 2—FREQUENCY ALLOCATION AND RADIO TREATY MATTERS

MISCELLANEOUS AMENDMENTS

NOTE: In F. R. Document 50-9190, appearing at page 6964, of the issue for Wednesday, October 18, 1950, the original document is corrected in the following manner: The section reference in amending paragraph 2, on page 6966, column 3, is changed from "2.103 (a)" to "2.104 (a)".

[5] See section 405 of the Communications Act and §§ 1.390 and 1.723 of this chapter.

[6] This question is currently being explored in the proceedings in our Docket No. 8976 to determine whether the band 470-500 Mcs. should be assigned to television broadcasting or common carrier mobile services.

[7] Typical cases of this kind would arise where an outstanding mobile station license covers more mobile units than are actually in service, or where a construction permit has heretofore been issued but no equipment has yet been purchased and delivered, etc.

[8] Commissioners Hyde, Webster, and Hennock not participating.

PROPOSED RULE MAKING

DEPARTMENT OF AGRICULTURE

Production and Marketing Administration

[7 CFR, Part 44]

U. S. STANDARDS FOR SUGARCANE SIRUP

EXTENSION OF TIME

Notice is hereby given of the extension, until January 20, 1951, of the period of time within which written data, views, and arguments may be submitted by interested parties for consideration in connection with proposed United States Standards for Sugarcane Sirup.

The proposed standards are set forth in the notice (F. R. Doc. 50-8411; 15 F. R. 6476) which was published in the FEDERAL REGISTER on September 26, 1950.

Done at Washington, D. C. this 25th day of October 1950.

[SEAL] JOHN I. THOMPSON,
Assistant Administrator, Production and Marketing Administration.

[F. R. Doc. 50-9573; Filed, Oct. 27, 1950; 8:53 a. m.]

[7 CFR, Part 44]

TO U. S. STANDARDS FOR EDIBLE SUGARCANE MOLASSES

EXTENSION OF TIME

Notice is hereby given of the extension, until January 20, 1951, of the period of time within which written data, views, and arguments may be submitted by interested parties for consideration in connection with proposed United States Standards for Edible Sugarcane Molasses.

The proposed standards are set forth in the notice (F. R. Doc. 50-8412; 15 F. R. 6474) which was published in the FEDERAL REGISTER on September 26, 1950.

Done at Washington, D. C. this 25th day of October 1950.

[SEAL] JOHN I. THOMPSON,
Assistant Administrator, Production and Marketing Administration.

[F. R. Doc. 50-9574; Filed, Oct. 27, 1950; 8:53 a. m.]

[7 CFR, Part 70]

FORM OF APPLICATION AND CONTRACT FOR INSPECTION OF DRESSED POULTRY FOR CONDITION ONLY ON A CONTRACT BASIS

NOTICE OF PROPOSED RULE MAKING

Notice is hereby given that the Administration is considering the approval of a form of application and contract for inspection of dressed poultry for condition only in an official plant on a contract basis. Whenever any person desires inspection service to be rendered by the Administration at any plant with respect to dressed poultry for condition only, pursuant to the applicable regulations (7 CFR Part 70) of the Department, he may apply for such service by submitting, to the Administrator, a properly completed application (in duplicate) in the form herein set forth. Upon approval of the application by the Administrator, it will become the contract providing for such inspection service at such plant. This application and contract form specifies the conditions under which service will be performed (including the extent of the financial obligations to be assumed by the applicant) in accordance with the aforesaid regulations. Such regulations are currently operative pursuant to the authority contained in the Agricultural Marketing Act of 1946 (60 Stat. 1087; 7 U. S. C. 1621 et seq.) and the Department of Agriculture Appropriation Act, 1951 (Pub. Law 759, approved September 6, 1950). The fees for the inspection service are so calculated as to provide the revenue necessary for the conduct of the service on an equitable basis, and be reasonable and as nearly as may be to cover the cost for service rendered.

All persons who desire to submit written data, views, or arguments for consideration in connection with the proposed application and contract should file same in duplicate with the Chief, Dairy and Poultry Inspection and Grading Division, Room 2738 South Building, United States Department of Agriculture, Washington 25, D. C., not later than the close of business on the 30th day after the publication of this notice in the FEDERAL REGISTER.

The proposed application and contract is as follows:

APPLICATION FOR INSPECTION OF DRESSED POULTRY FOR CONDITION ONLY

Application is hereby made, in accordance with the applicable provisions of the regulations (7 CFR, Part 70; 14 F. R. 6835, 7727) governing the grading and inspection of poultry and domestic rabbits and edible products thereof and United States specifications for classes, standards, and grades with respect thereto, for the inspection of dressed poultry for condition only at the following designated plant:

Name of plant.....
Street address.....
City and State.....

(a) In making this application, the applicant agrees to comply with the terms and conditions of the aforesaid regulations (including, but not being limited to, such instructions governing inspection of products as may be issued, from time to time, by the Administrator), and the following:

(1) Payment for the full cost of the inspection service covered hereby shall be made by the applicant to the Administration not later than thirty (30) days from date of billing. Such full costs shall comprise such of the following items as may be due and may be included, from time to time, in the invoice or invoices covering the period or periods during which the inspection service may be rendered:

(i) A charge of $75.00 for the initial survey of the designated plant and its premises (but no charge for the final survey);

(ii) Charges for each additional survey, if any, made at the request of the applicant to be computed on the basis (*a*) of the actual cost to the Administration of the travel and per diem in lieu of subsistence incurred in the making of the survey, and (*b*) a charge of $3.00 per hour for the time consumed at the plant in making the survey;

(iii) A charge of $72.00 per 40-hour work week for each inspector who is provided to perform the inspection for condition covered hereby, or, if such inspector is assigned to more than one plant and will divide his time among the plants to which he is assigned to perform such inspection for condition, that portion of $72.00 obtained by dividing that sum by the number of plants at which the service is furnished by the inspector: *Provided*, That, no charge shall be made hereunder for any inspector during any period of leave approved by the Administration for such inspector;

(iv) (*a*) A charge of $3.50 per week to be applied to the cost of travel by the inspector between plants, such charge to be made only when the same inspector is provided to perform the inspection service in more than one plant, and (*b*) a charge for travel expenses and per diem in lieu of subsistence incurred by the Administration in connection with each inspector who is temporarily assigned to the designated plant as a relief inspector during periods of leave taken by the regular inspector, or, if such relief inspector is assigned to more than one plant and will divide his time among the plants to which he is assigned to perform such inspection service, that portion of such traveling and per diem expenses obtained by dividing the amount of such expenses by the number of plants at which the service is furnished by the inspector;

(v) A charge in an amount equal to seven (7) percent of the amounts prescribed in (iii) and (iv) hereof to cover approximate overhead for administrative and other costs and expenses incurred by the Administration in rendering inspection service pursuant to the aforesaid regulations;

(vi) The applicant shall also, upon receipt of an invoice therefor, at the inauguration of the inspection service pursuant hereto, make an advance payment in an amount to cover the estimated average cost of inspection in the designated plant for a period of four weeks. The advance payment will be applied to the final bill and any balance due the applicant will be refunded on termination of this contract;

(vii) The charges specified in (iii), (iv) and (v) hereof shall be billed at the end of each four-week billing period.

(2) Inspectors will be provided by the Administration to perform the inspection service covered hereby. Whenever operations at the designated plant are discontinued during any period, or periods, any inspector (assigned, as aforesaid, by the Administration to the designated plant) may perform such other services as may be deemed appropriate, and are approved, by the regional supervisor.

(3) The Administration will not be responsible for damages accruing through any errors of commission or omission on the part of its inspectors when engaged in rendering service hereunder.

(4) The inspection service herein applied for shall be provided at the designated plant and shall be continued until the service or this contract is suspended, withdrawn, or terminated (i) by mutual consent; (ii) by thirty (30) days' written notice given by either party to the other party specifying the date of suspension, withdrawal or termination; (iii) pursuant to the aforesaid regulations; (iv) upon one (1) day's written notice by the Administration to the appli-

cant, if the applicant fails to honor any invoice within thirty (30) days after date of invoice covering the cost of the inspection service as herein provided, or if the applicant fails to comply with the terms and conditions hereof.

(b) All terms used herein shall have the same meaning as when used in the aforesaid regulations and instructions.

(c) No Member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom unless it be made with a corporation for its general benefit.

(d) Additional conditions:

Approved:

	(Applicant)
By ----------	By ----------
(Title)	(Street)
(Date)	(City) (State)
Production and Marketing Administration, U. S. Department of Agriculture.	(Date)

Done at Washington, D. C., this 25th day of October 1950.

[SEAL] JOHN I. THOMPSON,
Assistant Administrator, Production and Marketing Administration.

[F. R. Doc. 50-9572; Filed, Oct. 27, 1950; 8:53 a. m.]

DEPARTMENT OF THE INTERIOR

National Park Service

[36 CFR, Parts 1, 20]

COMMERCIAL FISHING IN EVERGLADES NATIONAL PARK

NOTICE OF HEARING ON PROPOSED RULES AND REGULATIONS

Notice is hereby given that pursuant to the authority contained in section 3 of the act of August 25, 1916 (39 Stat. 535; 16 U. S. C., sec. 3), the Secretary of the Interior is considering the issuance of the regulations as set forth below, relating to commercial fishing in Everglades National Park.

A public hearing for the purpose of receiving the views of interested parties with respect to the proposed regulations will be held at the Everglades National Park headquarters, Homestead, Florida, on November 16, 1950, commencing at 10 a. m.

The hearing will be held by a committee appointed by the Secretary of the Interior prior to the date set herein for such hearing.

All interested parties will be afforded an opportunity to be heard. Those desiring to be heard should inform Daniel B. Beard, Superintendent, Everglades National Park, P. O. Box 275, Homestead, Florida, of their intention in writing before November 13, 1950. Written statements may also be filed with the committee at the time of hearing or with the Chairman of the Committee at the Department of the Interior, Washington, D. C., on or before November 24, 1950.

WILLIAM E. WARNE,
Acting Secretary of the Interior.

OCTOBER 23, 1950.

1. Paragraph (a), § 1.4 *Fishing* is amended by inserting the word "Everglades" after the word "Shenandoah".

2. Paragraph (b), § 1.4 *Fishing* is amended by inserting the words "Everglades National Park" before the words "Fort Jefferson".

3. Paragraph (g), § 1.4 *Fishing* is amended by inserting the words "Everglades National Park" before the words "Fort Jefferson National Monument".

4. Section 20.45 *Everglades National Park* is amended to read as follows:

§ 20.45 *Everglades National Park*—(a) *Commercial fishing.* (1) The regulations in this paragraph apply only to the area of Everglades National Park known as Florida Bay and described as follows: All of the park waters and keys lying east and northeast of a line drawn south true from East Cape Sable to the park boundary, thence following the southern park boundary southeasterly to a point near Jewfish Key, thence northeasterly to its intersection with the Intracoastal Waterway. Nets and crab traps may be used in accordance with the provisions of subparagraphs (2) to (9) of this paragraph.

(2) Gill nets shall not exceed 400 yards in length and shall have a stretched mesh of not less than 3 inches measured from knot to knot after being shrunk. Twine used in gill nets shall not be heavier than 9/20 cotton or 16/3 linen or #139 nylon. Only one lead line is permitted and neither lead lines nor cork lines shall be more than one-fourth inch in diameter. No purses, pockets, trammels, or other special devices for entrapping or catching fish shall be used on gill nets. No gill net may be tarred, or contain hoops. Gill nets may be used in groups of not more than three, provided the nearest unit of the group shall be at least 1,000 yards from any other gill net.

(3) Cast nets shall be of the type thrown and hauled by hand by one person, and shall not exceed 18 feet in diameter of spread.

(4) Bully nets may have a spread of not more than 3 feet and a pocket of not more than 3 feet measured from rim to tip.

(5) Bait nets shall not be more than 100 feet in length and not more than 4 feet in depth.

(6) Crab traps shall have openings 3½ inches by 3½ inches or smaller.

(7) No other net, seine, trap, spear, explosive, or other device for entrapping, catching, killing, or taking fish, bait, or other similar edible products of the Gulf of Mexico may be used or be in the possession of any person within the Florida Bay section of the Everglades National Park, except hook and line, the pole or line being held in hand, and further excepting the shrimp and silver mullet nets permitted under subparagraph (8) of this paragraph.

(8) The taking of shrimp, prawn, silver mullet, or other products of the waters of the park for sale as bait is prohibited: *Provided*, That fishermen may obtain bait for their own use without permit: *Provided further*, That persons holding business concession permits may be authorized to take shrimp, prawn, silver mullet, or other products of the waters of the park for sale as bait. Bait nets, shrimp nets, or silver mullet nets may be used by holders of business concession permits and by fishermen obtaining bait for their own use.

(9) With the exception of the gill nets mentioned in subparagraph (2) of this paragraph, no nets may be tied together, and no net shall be used within 100 yards of another net (excepting shrimp nets or silver mullet nets).

(b) *Closed waters.* (1) The following-described areas are closed to fishing with nets or seines, except cast nets, bully nets, or shrimp nets.

(i) All inland lakes, bays, canals, rivers, and other bodies of water from the intersection of the northern park boundary with the Gulf of Mexico shore line southward to East Cape Sable excluding First Bay and including the area of Ponce de Leon Bay lying east of 81 degrees 08 minutes west longitude.

(ii) All inland lakes, bays, canals, rivers, and other bodies lying inland from the north shore of Florida Bay and Joe Bay and, in addition, the area north of a line drawn from Christian Point north of Joe Kemp Key to Shark Point and thence to Mosquito Point, including Otter Key. Entrances to such of the areas mentioned in this subparagraph as open on Florida Bay or the Gulf of Mexico will be posted with warning signs.

(2) The following-described area in the vicinity of Royal Palm Ranger Station is closed to all fishing: Township 58 south, range 37 east, sections 10 to 15, inclusive.

(3) The following-described area bordering Seven Mile Road (also known as Humble Oil Well Road) from Tamiami Trail south, is closed to all fishing: Township 54 south, range 36 east, sections 19, 30, and 31; township 55 south, range 36 east, sections 6, 7, 18, and 19.

(c) *Protection of turtles.* The killing, wounding, capturing, molesting, or attempting to kill, wound, or capture any sea turtle or terrapin, or the disturbance of the nests or eggs thereof at any time is prohibited. The unauthorized possession within the park of the dead body or any part thereof, or of the eggs of any sea turtle or terrapin shall be prima facie evidence that the person or persons having such possession are guilty of violating this regulation.

(d) *Use of park roads.* The use of federally owned roads within Everglades National Park by trucks or other conveyances for hauling out of the park for commercial purposes, fish, shrimp, prawn, silver mullet, or other bait or edible products of the park waters, is prohibited except when such hauling is done by persons who own land within the park, or by their employees.

(e) *Prohibited conveyances.* No vehicle or conveyance, including convey-

ances commonly referred to as "glade buggies" or "airboats," designed to operate in, on, or over waters, swamps, or land areas, may be operated upon or across federally owned lands, including swamps and watered areas, unless prior authorization has been obtained from the Superintendent. This restriction shall not apply, however, to the operation of vehicles or conveyances over established or well-defined roadways or trails, or to boats operated by cars, sails, or underwater propellers.

(f) *Applicability of State law.* Except as otherwise provided in this section and by § 1.4 of this chapter, all fishing in the waters of Everglades National Park shall be done in accordance with the laws of Florida and the regulations made pursuant thereto by the Game and Fresh Water Fish Commission and the State Board of Conservation.

(g) *Effective date.* The regulations in this section shall be effective beginning January 1, 1951.

[F. R. Doc. 50-9520; Filed, Oct. 27, 1950; 8:45 a. m.]

NOTICES

DEPARTMENT OF STATE

[Public Notice 64]

DISSOLUTION OF THE INTERIM OFFICE FOR GERMAN CONSULAR AFFAIRS

Notice is hereby given that, following the establishment of a German Consulate General at 745 Fifth Avenue, New York 22, New York, the Interim Office for German Consular Affairs in the Division of Protective Services, Office of Consular Affairs, Department of State, is dissolved, effective October 15, 1950. This action is taken in accordance with Public Law 798, 80th Congress, which states that the Department of State is authorized to perform consular functions for German nationals in the United States only until a German Government capable of representing its own nationals in the United States has been established.

Notice is further given that all German consular functions in the United States will fall under the jurisdiction of the German Consulate General upon the dissolution of the Interim Office.

All travel documents issued by the Interim Office for German Consular Affairs will retain full validity until their respective expiration dates. Holders of Interim Office travel documents who require renewals or extensions must apply to the German Consulate General for German passports.

For the Secretary of State.

CARLISLE H. HUMELSINE,
Deputy Under Secretary.

OCTOBER 23, 1950.

[F. R. Doc. 50-9521; Filed, Oct. 27, 1950; 8:45 a. m.]

DEPARTMENT OF THE TREASURY

Fiscal Service, Bureau of Accounts

AUTO-OWNERS INSURANCE COMPANY

SURETY COMPANIES ACCEPTABLE ON FEDERAL BONDS

OCTOBER 24, 1950.

A Certificate of Authority has been issued by the Secretary of the Treasury to the above company under the act of Congress approved July 30, 1947, 6 U. S. C. secs. 6–13, as an acceptable surety on Federal bonds. An underwriting limitation of $537,000.00 has been established for the company. Further details as to the extent and localities with respect to which the economy is acceptable as surety on Federal bonds will appear in the next issue of Treasury Department Form 356, copies of which, when issued, may be obtained from the Treasury Department, Bureau of Accounts, Section of Surety Bonds, Washington 25, D. C.

(Dept. Circ. 570, Rev. Apr. 20, 1943, 1950, 39th Supp.)

[SEAL] E. H. FOLEY, Jr.,
Acting Secretary of the Treasury.

[F. R. Doc. 50-9575; Filed, Oct. 27, 1950; 8:54 a. m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[56304]

ALABAMA

NOTICE OF FILING OF PLAT OF SURVEY

OCTOBER 24, 1950.

Notice is given that the plat of original survey of the following described lands, accepted May 31, 1950 will be officially filed in this Bureau effective at 10:00 a. m. on the 35th day after the date of this notice:

ST. STEPHENS MERIDIAN

T. 9 S., R. 5 E.,
Sec. 2, lots 1, 2;
Sec. 3, lot 1;
Sec. 10, lot 1.

The area described aggregates 31.72 acres.

Available data indicates that the lands consist of four small islands, the elevation of which varies from 1 to 5 feet above mean high tide; that lots 1, 2, sec. 2; lot 1, sec. 10 are from 75 to 100 percent marsh in character and are therefore subject to the filing of an application by the State of Alabama under the Swamp Act.

At the hour and date specified above the said lands shall, subject to valid existing rights and the provisions of existing withdrawals, and the right of the State under the Swamp Act of September 28, 1850 (9 Stat. 519), become subject to application, petition, location, or selection as follows:

(a) *Ninety-one day period for preference-right filings.* For a period of 91 days, commencing at the hour and on the day specified above, the public lands affected by this notice shall be subject only to (1) application under the homestead or the Small Tract Act of June 1, 1938, 52 Stat. 609 (43 U. S. C. 682a), as amended, by qualified veterans of World War II and other qualified persons entitled to preference under the act of September 27, 1944, 58 Stat. 747 (43 U. S. C. 279–284), as amended, subject to the requirements of applicable law, and (2) application under any applicable public-land law, based on prior existing valid settlement rights and preference rights conferred by existing laws or equitable claims subject to allowance and confirmation. Applications under subdivision (1) of this paragraph shall be subject to applications and claims of the classes described in subdivison (2) of this paragraph. All applications filed under this paragraph either at or before 10:00 a. m. on the 35th day after the date of this notice shall be treated as though filed simultaneously at that time. All applications filed under this paragraph after 10:00 a. m. on the said 35th day shall be considered in the order of filing.

(b) *Date for non-preference-right filings.* Commencing at 10:00 a. m. on the 126th day after the date of this notice, any lands remaining unappropriated shall become subject to such application, petition, location, selection, or other appropriation by the public generally as may be authorized by the public-land laws. All such applications filed either at or before 10:00 a. m. on the 126th day after the date of this notice, shall be treated as though filed simultaneously at the hour specified on such 126th day. All applications filed thereafter shall be considered in the order of filing.

A veteran shall accompany his application with a complete photostatic, or other copy (both sides), of his certificate of honorable discharge, or of an official document of his branch of the service which shows clearly his honorable discharge as defined in § 181.36 of Title 43 of the Code of Federal Regulations, or constitutes evidence of other facts upon which the claim for preference is based and which shows clearly the period of service. Other persons claiming credit for service of veterans must furnish like proof in support of their claims. Persons asserting preference rights, through settlement or otherwise, and those having equitable claims, shall accompany their applications by duly corroborated statements in support thereof, setting forth in detail all facts relevant to their claims.

Applications for these lands, which shall be filed in the Bureau of Land Management, Washington 25, D. C., shall be acted upon in accordance with the regulations contained in § 295.8 of Title 43 of the Code of Federal Regulations and Part 296 of that title, to the extent

that such regulations are applicable. Applications under the homestead laws shall be governed by the regulations contained in Parts 166 to 170, inclusive, of Title 43 of the Code of Federal Regulations, and applications under the desert-land laws and the said Small Tract Act of June 1, 1938, shall be governed by the regulations contained in Parts 232 and 257, respectively, of that title.

Inquiries concerning these lands shall be addressed to Director, Bureau of Land Management, Washington 25, D. C.

WILLIAM ZIMMERMAN, Jr.,
Assistant Director.

[F. R. Doc. 50-9513; Filed, Oct. 27, 1950; 8:45 a. m.]

[50419]

ARIZONA

NOTICE OF FILING OF PLAT OF SURVEY

Notice is given that the plat of extension survey of the following described lands, accepted November 1, 1949, will be officially filed in the Land and Survey Office, Phoenix, Arizona, effective at 10:00 a. m. on the 35th day after the date of this notice:

GILA AND SALT RIVER MERIDIAN

T. 3 N., R. 7 E.,
Sec. 33, lots 5, 6, 7, 8, 9, 10, 11, 12, N½SE¼, NE¼.
Sec. 34, lots 1, 2, 3, 4, 5, 6, 7, 8, 9, N½, N½SW¼.
Sec. 35, lots 1, 2, 3, 4, 5, N½, SE¼.

The area described aggregates 1,647.14 acres.

All the lands involved were withdrawn and included in the Tonto National Forest by Executive Order dated January 1, 1908.

All lands within ½ mile of the Salt River were withdrawn February 9, 1917 and included in Water Power Designation #81 Arizona No. 5—681101.

Anyone having a valid settlement or other right to any of these lands initiated prior to the date of the withdrawals of the lands should assert same within three months from the date on which the plat is officially filed by filing an application under the appropriate public land laws, setting forth all facts relative thereto.

All inquiries relating to these lands should be addressed to the Manager, Land and Survey Office, Phoenix, Arizona.

WILLIAM ZIMMERMAN, Jr.,
Assistant Director.

[F. R. Doc. 50-9514; Filed, Oct. 27, 1950; 8:45 a. m.]

[Misc. 3084]

ARIZONA

ORDER PROVIDING FOR OPENING OF PUBLIC LANDS

OCTOBER 24, 1950.

In an exchange of lands made under the provisions of section 8 of the act of June 28, 1934, (48 Stat. 1269), as amended June 26, 1936 (49 Stat. 1976, 43 U. S. C. sec. 315g), the following described lands have been reconveyed to the United States:

GILA AND SALT RIVER MERIDIAN

T. 9 N., R. 3 W.,
Sec. 32, NE¼NE¼, NW¼NE¼.
T. 3 N., R. 4 W.,
Sec. 2, E½E½.
T. 4 N., R. 7 W.,
Sec. 2, lots 1, 2, 3, and 4, S½N½, S½.
T. 1 S., R. 10 W.,
Sec. 16, N½SW¼.

The areas described aggregate 1,291.96 acres.

The lands are primarily suitable for grazing.

No applications for these lands may be allowed under the homestead, small tract, desert-land, or any other nonmineral public-land laws, unless the lands have already been classified as valuable or suitable for such type of application, or shall be so classified upon consideration of an application.

This order shall not otherwise become effective to change the status of such lands until 10:00 a. m. on the 35th day after the date of this order. At that time the said lands shall, subject to valid existing rights and the provisions of existing withdrawals, become subject to application, petition, location, and selection as follows:

(a) *Ninety-one day period for preference-right filings.* For a period of 91 days, commencing at the hour and on the day specified above, the public lands affected by this order shall be subject only to (1) application under the homestead or the desert-land laws or the Small Tract Act of June 1, 1938, 52 Stat. 609 (43 U. S. C. 682a), as amended, by qualified veterans of World War II and other qualified persons entitled to preference under the act of September 27, 1944, 58 Stat. 747 (43 U. S. C. 279-284), as amended, subject to the requirements of applicable law, and (2) application under any applicable public-land law, based on prior existing valid settlement rights and preference rights conferred by existing laws or equitable claims subject to allowance and confirmation. Applications under subdivision (1) of this paragraph shall be subject to applications and claims of the classes described in subdivision (2) of this paragraph. All applications filed under this paragraph either at or before 10:00 a. m. on the 35th day after the date of this order shall be treated as though filed simultaneously at that time. All applications filed under this paragraph after 10:00 a. m. on the said 35th day shall be considered in the order of filing.

(b) *Date for non-preference-right filings.* Commencing at 10:00 a. m. on the 126th day after the date of this order, any lands remaining unappropriated shall become subject to such application, petition, location, selection, or other appropriation by the public generally as may be authorized by the public-land laws. All such applications filed either at or before 10:00 a. m. on the 126th day after the date of this order, shall be treated as though filed simultaneously at the hour specified on such 126th day. All applications filed thereafter shall be considered in the order of filing.

A veteran shall accompany his application with a complete photostatic, or other copy (both sides), of his certificate of honorable discharge, or of an official document of his branch of the service which shows clearly his honorable discharge as defined in § 181.36 of title 43 of the Code of Federal Regulations, or constitutes evidence of other facts upon which the claim for preference is based and which shows clearly the period of service. Other persons claiming credit for service of veterans must furnish like proof in support of their claims. Persons asserting preference rights, through settlement or otherwise, and those having equitable claims, shall accompany their applications by duly corroborated statements in support thereof, setting forth in detail all facts relevant to their claims.

Applications for these lands, which shall be filed in the Land and Survey Office, Phoenix, Arizona, shall be acted upon in accordance with the regulations contained in § 295.8 of Title 43 of the Code of Federal Regulations and Part 296 of that title, to the extent that such regulations are applicable. Applications under the homestead laws shall be governed by the regulations contained in Parts 166 to 170, inclusive, of Title 43 of the Code of Federal Regulations, and applications under the desert-land laws and the said Small Tract Act of June 1, 1938, shall be governed by the regulations contained in Parts 232 and 257, respectively, of that title.

Inquiries concerning these lands shall be addressed to the Manager, Land and Survey Office, Phoenix, Arizona.

WILLIAM ZIMMERMAN, Jr.,
Assistant Director.

[F. R. Doc. 50-9515; Filed, Oct. 27, 1950; 8:45 a. m.]

[Misc. 53626]

CALIFORNIA

ORDER PROVIDING FOR OPENING OF PUBLIC LANDS

OCTOBER 24, 1950.

In an exchange of lands made under the provisions of section 8 of the act of June 28, 1934 (48 Stat. 1269), as amended June 26, 1936 (49 Stat. 1976, 43 U. S. C. sec. 315g), the following described lands have been reconveyed to the United States:

MOUNT DIABLO MERIDIAN

T. 26 S., R. 43 E.,
Sec. 8, E½NW¼, SW¼NE¼.

The area described aggregates 120 acres.

The land is primarily waste land and has no economic use.

No applications for these lands may be allowed under the homestead, small tract, desert-land, or any other nonmineral public-land laws, unless the lands have already been classified as valuable or suitable for such type of application, or shall be so classified upon consideration of an application.

This order shall not otherwise become effective to change the status of such lands until 10:00 a. m. on the 35th day after the date of this order. At that

time the said lands shall, subject to valid existing rights and the provisions of existing withdrawals, become subject to application, petition, location, and selection as follows:

(a) *Ninety-one day period for preference-right filings.* For a period of 91 days, commencing at the hour and on the day specified above, the public lands affected by this order shall be subject only to (1) application under the homestead or the desert-land laws or the Small Tract Act of June 1, 1938, 52 Stat. 609 (43 U. S. C. 682a), as amended, by qualified veterans of World War II and other qualified persons entitled to preference under the act of September 27, 1944, 58 Stat. 747 (43 U. S. C. 279–284), as amended, subject to the requirements of applicable law, and (2) application under any applicable public-land law, based on prior existing valid settlement rights and preference rights conferred by existing laws or equitable claims subject to allowance and confirmation. Applications under subdivision (1) of this paragraph shall be subject to applications and claims of the classes described in subdivision (2) of this paragraph. All applications filed under this paragraph either at or before 10:00 a. m. on the 35th day after the date of this order shall be treated as though filed simultaneously at that time. All applications filed under this paragraph after 10:00 a. m. on the said 35th day shall be considered in the order of filing.

(b) *Date for non-preference-right filings.* Commencing at 10:00 a. m. on the 126th day after the date of this order, any lands remaining unappropriated shall become subject to such application, petition, location, selection, or other appropriation by the public generally as may be authorized by the public-land laws. All such applications filed either at or before 10:00 a. m. on the 126th day after the date of this order shall be treated as though filed simultaneously at the hour specified on such 126th day. All applications filed thereafter shall be considered in the order of filing.

A veteran shall accompany his application with a complete photostatic, or other copy (both sides), of his certificate of honorable discharge, or of an official document of his branch of the service which shows clearly his honorable discharge as defined in § 181.36 of Title 43 of the Code of Federal Regulations, or constitutes evidence of other facts upon which the claim for preference is based and which shows clearly the period of service. Other persons claiming credit for service of veterans must furnish like proof in support of their claims. Persons asserting preference rights, through settlement or otherwise, and those having equitable claims, shall accompany their applications by duly corroborated statements in support thereof, setting forth in detail all facts relevant to their claims.

Applications for these lands, which shall be filed in the Land Office, Sacramento, California, shall be acted upon in accordance with the regulations contained in § 295.8 of Title 43 of the Code of Federal Regulations and Part 296 of that title, to the extent that such regulations are applicable. Applications under the homestead laws shall be governed by the regulations contained in Parts 166 to 170, inclusive, of Title 43 of the Code of Federal Regulations, and applications under the desert-land laws and the said Small Tract Act of June 1, 1938, shall be governed by the regulations contained in Parts 232 and 257, respectively, of that title.

Inquiries concerning these lands shall be addressed to the Manager, Land Office, Sacramento, California.

WILLIAM ZIMMERMAN, Jr.,
Assistant Director.

[F. R. Doc. 50-9516; Filed, Oct. 27, 1950; 8:45 a. m.]

CALIFORNIA

NOTICE OF FILING OF PLAT OF SURVEY

OCTOBER 24, 1950.

Notice is given that the plats of (1) Dependent Resurveys of parts of T. 12 S., R. 21 E.; T. 11 S., R. 22 E.; T. 13 S., R. 22 E.; T. 15 S., R. 24 E.; T. 14 S., R. 24 E., S. B. M., delineating a retracement and reestablishment of the lines of the original surveys as shown upon the plats approved February 13, 1919, May 22, 1879, and April 17, 1883, respectively, and (2) Extension Survey in T. 14 S., R. 23 E., S. B. M., California, of the following described lands, accepted December 14, 1948, will be officially filed in the Land Office, Los Angeles, California, effective at 10:00 a. m. on the 35th day after the date of this notice:

SAN BERNARDINO MERIDIAN

T. 14 S., R. 23 E.,
Sec. 12, lots 1, 2, 3, 4, 5, 6, 7, 8, 9, SW¼SW¼, S½SE¼.

The area described aggregates 488.42 acres.

Available data indicates that the lands described are mountainous desert in character.

All the lands involved were included in first form reclamation withdrawal for reclamation purposes by the Secretary October 16, 1931—1433125.

All the lands involved were reserved by Executive Order No. 8685 dated February 14, 1941 and included in the Imperial National Wildlife Refuge, LC February 27, 1941—1814082.

Anyone having a valid settlement or other right to any of these lands prior to the date of the withdrawal of the lands should assert same within three months from the date on which the plat is officially filed by filing an application under the appropriate public land laws, setting forth all facts relative thereto.

All inquiries relating to these lands should be addressed to the Manager, Land Office, Los Angeles, California.

WILLIAM ZIMMERMAN, Jr.,
Assistant Director.

[F. R. Doc. 50-9517; Filed, Oct. 27, 1950; 8:45 a. m.]

[26140]

NEVADA

NOTICE OF FILING OF PLAT OF SURVEY

OCTOBER 24, 1950.

Notice is given that the plats of original surveys of the following described lands, accepted September 22, 1949 will be officially filed in the Land and Survey Office, Reno, Nevada, effective at 10:00 a. m. on the 35th day after the date of this notice:

MOUNT DIABLO MERIDIAN

T. 21 S., R. 52 E.
Sec. 1, lots 1, 2, 3, 4, 5, 6.
T. 21 S., R. 53 E.
Sec. 1, lots 1, 2, 3, 4, 5, 6, 7, SW¼NE¼, S½NW¼, SW¼, W½SE¼.
Sec. 2, lots 1, 2, 3, 4, S½N½, S½.
Sec. 3, lots 1, 2, 3, 4, S½N½, S½.
Sec. 4, lots 1, 2, 3, 4, S½N½, S½.
Sec. 5, lots 1, 2, 3, 4, S½N½, S½.
Sec. 6, lots 1, 2, 3, 4, 5, 6, 7, SE¼NW¼, S½NE¼, E½SW¼, SE¼.
Sec. 7, lots 1, 2, 3, 4, E½W½, E½.
Sec. 8, all
Sec. 9, all
Sec. 10, all
Sec. 11, all
Sec. 12, lots 1, 2, 3, 4, W½E½, W½.
Sec. 13, lots 1, 2, 3, 4, W½E½, W½.
Sec. 14, all
Sec. 15, all
Sec. 16, all
Sec. 17, lot 1, N½, N½SW¼, SE¼SW¼, SE¼.
Sec. 18, lots 1, 2, 3, N½NE¼, SE¼NE¼.
Sec. 20, lots 1, 2, 3, N½NE¼, SE¼NE¼.
Sec. 21, lot 1, N½, N½SW¼, SE¼SW¼, SE¼.
Sec. 22, all
Sec. 23, all
Sec. 24, lots 1, 2, 3, 4, W½E½, W½.
Sec. 25, lots 1, 2, 3, 4, W½E½, W½.
Sec. 26, all
Sec. 27, lot 1, N½, N½SW¼, SE¼SW¼, SE¼.
Sec. 28, lots 1, 2, 3, N½NE¼, SE¼NE¼.
Sec. 34, lots 1, 2, 3, 4, N½NE¼.
Sec. 35, lots 1, 2, 3, N½, NE¼SW¼, SE¼.
Sec. 36, lots 1, 2, 3, 4, W½E½, W½.
T. 22 S., R. 53 E.
Sec. 1, lots 1 to 10 incl., S½N½, NE¼SW¼, SE¼.
Sec. 2, lots 1, 2, 3, 4, 5, 6.
Sec. 12, lots 1, 2, NE¼NE¼.

The area described aggregates 18,198.79 acres.

Available data indicates that the character of the lands is nearly level desert.

No application for these lands may be allowed under the homestead, small tract, desert land, or any other nonmineral public land laws unless the land has already been classified as valuable or suitable for such type of application or shall be so classified upon consideration of an application.

According to the field notes and as shown by the plat there are springs of water in the NW¼NE¼ and SE¼NE¼ sec. 15, T. 21 S., R. 53 E., M. D. M.

The legal subdivision containing each spring and the lands within a quarter of a mile of each spring may be affected by the general withdrawal made by Executive Order of April 17, 1926 (43 CFR 292.1), creating Public Water Reserve No. 107, but the question of whether each spring is of such size or value or so needed by the public as to bring the lands within the scope of the withdrawal is left for future determination.

At the hour and date specified above the said lands shall, subject to valid existing rights and the provisions of existing withdrawals, become subject to application, petition, location, or selection as follows:

(a) *Ninety-one day period for preference-right filings.* For a period of 91 days, commencing at the hour and on the day specified above, the public lands affected by this notice shall be subject only to (1) application under the homestead or the desert-land laws or the Small Tract Act of June 1, 1938, 52 Stat. 609 (43 U. S. C. 682a), as amended, by qualified veterans of World War II and other qualified persons entitled to preference under the act of September 27, 1944, 58 Stat. 747 (43 U. S. C. 279–284), as amended, subject to the requirements of applicable law, and (2) application under any applicable public-land law, based on prior existing valid settlement rights and preference rights conferred by existing laws or equitable claims subject to allowance and confirmation. Applications under subdivision (1) of this paragraph shall be subject to applications and claims of the classes described in subdivision (2) of this paragraph. All applications filed under this paragraph either at or before 10:00 a. m. on the 35th day after the date of this notice shall be treated as though filed simultaneously at that time. All applications filed under this paragraph after 10:00 a. m. on the said 35th day shall be considered in the order of filing.

(b) *Date for non-preference-right filings.* Commencing at 10:00 a. m. on the 126th day after the date of this notice, any lands remaining unappropriated shall become subject to such application, petition, location, selection, or other appropriation by the public generally as may be authorized by the public-land laws. All such applications filed either at or before 10:00 a. m. on the 126th day after the date of this notice, shall be treated as though filed simultaneously at the hour specified on such 126th day. All applications filed thereafter shall be considered in the order of filing.

A veteran shall accompany his application with a complete photostatic, or other copy (both sides), of his certificate of honorable discharge, or of an official document of his branch of the service which shows clearly his honorable discharge as defined in § 181.36 of Title 43 of the Code of Federal Regulations, or constitutes evidence of other facts upon which the claim for preference is based and which shows clearly the period of service. Other persons claiming credit for service of veterans must furnish like proof in support of their claims. Persons asserting preference rights, through settlement or otherwise, and those having equitable claims, shall accompany their applications by duly corroborated statements in support thereof, setting forth in detail all facts relevant to their claims.

Applications for these lands, which shall be filed in the Land and Survey Office, Reno, Nevada, shall be acted upon in accordance with the regulations contained in § 295.8 of Title 43 of the Code of Federal Regulations and Part 296 of that title, to the extent that such regulations are applicable. Applications under the homestead laws shall be governed by the regulations contained in Parts 166 to 170, inclusive, of Title 43 of the Code of Federal Regulations, and applications under the desert-land laws and the said Small Tract Act of June 1, 1938, shall be governed by the regulations contained in Parts 232 and 257, respectively, of that title.

Inquiries concerning these lands shall be addressed to the Land and Survey Office, Reno, Nevada.

WILLIAM ZIMMERMAN, Jr.,
Assistant Director.

[F. R. Doc. 50-9518; Filed, Oct. 27, 1950; 8:45 a. m.]

Office of the Secretary

[Order No. 2594]

SOUTHWESTERN POWER ADMINISTRATION

REVISED STATEMENT OF ORGANIZATION

OCTOBER 23, 1950.

SECTION 1. *Purpose.* This order prescribes a revised organization of the Southwestern Power Administration and supersedes Part A12.00 of the Official Organization Handbook.

SEC. 2. *Amendment to Official Organization Handbook.* Part A12.00, "Southwestern Power Administration," is revised to read as follows:

A12.00 SOUTHWESTERN POWER ADMINISTRATION

Administrator: Douglas G. Wright.
Assistant Administrator: James V. Alfriend, Jr.
Assistant to the Administrator (Washington, D. C., office): Henry W. Bialock.
Executive Assistant: M. McGinnity.
Chief Counsel, Office of the Chief Counsel: Robert L. Davidson.
Chief, Office of Reports and Information: Francis B. McManus.
Chief, Division of Engineering: Floyd E. Conway.
Chief, Division of Operations: Philroy C. Gale.
Chief, Division of Sales: George J. Neighbors.
Chief, Division of Land: Grover C. Spade.
Chief, Division of Administration: N. McGinnity.
Controller, Division of Finance: Mack Porter.

ESTABLISHMENT

Creation. The Southwestern Power Administration was created by the Secretary of the Interior in 1943 to market electric power and energy from the Denison Dam Project and the Norfork Dam Project, both constructed and operated by the United States through the Corps of Engineers of the Department of the Army. Pursuant to section 5 of the Flood Control Act of 1944, the Secretary re-established the Southwestern Power Administration in 1945, designating it as the unit responsible for marketing surplus electric power and energy from reservoir projects constructed by the Department of the Army in its area.

General description. The Southwestern Power Administration consists of the Headquarters Office at Tulsa, Oklahoma; a Washington Office and Area Offices at Little Rock, Arkansas, and Denison, Texas. The Division of Operations has a Field Operations Center at Muskogee, Oklahoma.

HEADQUARTERS ORGANIZATION

A12.01 *Office of the Administrator.* The Office of the Administrator, with headquarters at Tulsa, Oklahoma, includes the Assistant Administrator, the Executive Assistant, and staff assistants. Other staff assistants are located at Washington, D. C., Denison, Texas, and Little Rock, Arkansas. The Administrator's Office formulates policies and directs programs for carrying out the objectives of the Administration.

A12.01a The Washington Office expedites the formulation and execution of the Administration's programs by coordinating departmental, interdepartmental, congressional, and business relationships.

A12.01b The Denison Office and the Little Rock Office coordinate the activities of the Administration within the States of Texas and Louisiana and of Arkansas and Missouri, respectively. These offices represent the Administrator and are functionally responsible to the divisions whose activities are performed within the area.

A12.02 *Office of the Chief Counsel.* The Office of the Chief Counsel performs all the legal services for the Administration and advises the Administrator and his staff on the legal aspects of policies and programs.

A12.02a The Power Branch performs the legal work in connection with the sale and exchange of electric power and energy.

A12.02b The Acquisition Branch performs the legal work in connection with procurement, including contracts for the acquisition of land, materials, supplies, and construction contracts.

A12.02c The Procedure Branch performs the legal work in connection with claims, interna' administration, and legislation.

A12.03 *Office of Reports and Information.* The Office of Reports and Information is responsible for reviewing and coordinating all operating reporting systems of the Administration, and assists in the research and compilation of information with respect to the needs and problems of Southwestern Power Administration's marketing area.

A12.04 *Division of Engineering.* The Division of Engineering formulates and executes policies and programs pertaining to system planning, engineering design, construction, and power production of the Administration's facilities.

A12.04a The Production, Planning and Survey Branch conducts studies of power potentialities and power production to establish the amount of power and energy which is or may be available, and determines the method by which the operation of present and proposed generating plants may be coordinated to obtain maximum utilization of water and power resources; develops relating reservoir rule curves; conducts system engineering and cost studies, and prepares engineering recommendations for system additions, customers' facilities, system interconnections, and long-r..nge construction program; rec-

ommends short-range construction programs and prepares justification therefor; surveys transmission lines, substations, and other facilities.

A12.04b The Design and Construction Branch designs and drafts plans and specifications for and inspects the construction of transmission lines and substations and related power system facilities; is charged with the custody of engineering materials in the field during construction; and makes engineering studies, tests and experiments with regard to the power, relay, protection, and communications systems and equipment.

A12.05 *Division of Operations.* The Division of Operations formulates and executes policies and programs pertaining to the operation and maintenance of the Administration's power facilities.

A12.05a The System Operation Branch operates all power facilities of the Administration and administers contractual operation requirements.

A12.05b The Maintenance Branch maintains all transmission lines, substations, and associated power facilities; operates and maintains metering, relaying, communication, and laboratory facilities; maintains and builds access roads, and maintains rights-of-way; operates and maintains garage and shop facilities.

A12.06 *Division of Sales.* The Division of Sales formulates and executes policies and programs pertaining to the marketing and sale of power; determines the extent and location of future power load requirements; conducts negotiations for the sale, exchange, and transfer of power; administers provisions of executed contracts, including consultation and negotiations with customers concerning service under such contracts; develops wholesale power rate structures for power marketed; reviews the resale rates for customers of the Administration and the financial and operating status under these rates; and prepares power bills.

A12.06a The Negotiations and Sales Branch establishes and maintains active sales contacts with public and private agencies and negotiates contracts for the delivery of wholesale power, including interchanges with such agencies; in cooperation with the Office of the Chief Counsel, prepares standard and special contracts for the sale of power and energy.

A12.06b The Rates and Statistics Branch conducts studies and statistical analyses of power rates; develops and recommends wholesale and resale rate schedules; assists customers on resale rate schedules, statistical procedures, and related problems; and conducts investigations and prepares reports on regional power requirements and on regional power transmission facilities and capabilities.

A12.06c The Services and Billing Branch administers power contract provisions and adjusts all customers' complaints; and computes and prepares bills for wholesale power sold and verifies bills received for interchange or purchase of power by the Adminstration.

A12.07 *Division of Land.* The Division of Land formulates and executes policies and programs pertaining to the acquisition and management of real estate under the jurisdiction of the Administration and is responsible for resolving claims arising during the acquisition, construction, and operation of the system.

A12.07a The Appraising Branch appraises land and facilities required for the construction, maintenance, and operation of transmission lines, substations, switching stations, and related facilities.

A12.07b The Negotiation Branch conducts negotiations with landowners for acquisition of properties by direct purchase or condemnation.

A12.07c The Records Branch plans, coordinates, directs, and controls the preparation and maintenance of land records.

A12.08 *Division of Administration.* The Division of Administration formulates and executes policies and programs pertaining to administrative services.

A12.08a The Supply Branch procures materials, equipment, supplies, and services; receives, stores, issues, assigns, and controls all materials and supplies.

A12.08b The Personnel Branch plans and conducts the Administration's personnel program.

A12.08c The Administrative Services Branch conducts studies of the organization and its procedures; provides office services; maintains and controls transportation services.

A12.09 *Division of Finance.* The Division of Finance coordinates the preparation of the Administration's budget estimates and justifications, and controls the budget plans; formulates and executes policies and programs relating to finance, accounting, and auditing; and conducts studies of theories and methods of cost allocation of multiple-purpose projects, and carries on necessary negotiations and work relative thereto.

A12.09a The Budget Branch plans, prepares, presents and administers the budget.

A12.09b The Accounting Branch establishes and maintains accounts and accounting records; formulates accounting procedures; makes internal and external audits; develops and maintains fixed capital and accountable property records by priced units, and maintains accounting control of materials; controls receipt, disbursement, and application of funds; maintains leave and retirement records; and prepares and issues financial statements and reports.

A12.09c The Cost Allocation Branch makes financial analyses and studies of the Administration's operations, and submits recommendations based thereon; conducts negotiations relative to allocation of costs of multiple-purpose projects; and prepares repayment schedules covering the Government's investment in power facilities.

FIELD ORGANIZATION

A12.20 *Division of Operations.* The Field Operations Center is located at Muskogee, Oklahoma, with Maintenance Units located ot Denison, Texas, Clarksville, Arkansas, and West Plains, Missouri. Patrol stations are established at Holdenville and Sallisaw, Oklahoma, and at Yellville and Marshall, Arkansas. Additional Maintenance Units and patrol stations will be established as required.

PLACES TO OBTAIN INFORMATION AND MAKE REQUESTS

A12.30 *Inquiries and requests.* Information concerning the policies and programs of the Administration, wholesale power rates, power contracts, procedure, availability of supply, and construction plans may be obtained by addressing the Administrator, Southwestern Power Administration, Post Office Drawer 1619, Tulsa 1, Oklahoma. In Washington, D. C., information regarding policies, functions, and operations of the Southwestern Power Administration may be obtained from the Office in Rooms 6326–6328, Department of the Interior Building. Inquiries regarding power contracts, including rates, availability of supply, and contracts which concern activities in the States of Texas and Louisiana, may be addressed to the Southwestern Power Administration, Rooms 201–205 Barrett Building, Post Office Box 336, Denison, Texas. Inquiries regarding activities relative to policies and programs applicable to the States of Arkansas and Missouri may be addressed to the Southwestern Power Administration, 205 Old Post Office Building, Post Office Box 306, Little Rock, Arkansas.

A12.31 *Location of Headquarters Organization.* The Administrator and the Headquarters Office of the Southwestern Power Administration are located in the Petroleum Building, in Tulsa, Oklahoma. The Washington Office is located in Rooms 6326–6328, Department of the Interior Building. The Little Rock Office is located at 205 Old Post Office Building, Little Rock, Arkansas. The Denison, Texas, Office is located in Rooms 201–205, Barrett Building, at the corner of Mirick and Main Street in Denison, Texas.

A12.32 *Location of Field Organization.* Information with regard to the technical operation and maintenance of the system may be obtained from the Field Operations Center, SPA Building, located at the corner of Owen Street and Okmulgee Avenue, Muskogee, Oklahoma, Post Office Drawer 1403, Muskogee, Oklahoma.

SEC. 3. *Effective date.* This order shall become effective immediately upon signature.

WILLIAM E. WARNE,
Acting Secretary of the Interior.

[F. R. Doc. 50-9519; Filed, Oct. 27, 1950; 8:45 a. m.]

FEDERAL COMMUNICATIONS COMMISSION

FM STATION WFMU

CHANGE IN CHANNEL ALLOCATION

In the matter of amendment of revised tentative allocation plan for Class B FM broadcast stations to change channel allocations to Crawfordsville, Indiana.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 18th day of October 1950;

The Commission having under consideration an amendment to its Revised Tentative Allocation Plan for Class B FM Broadcast Stations to change the channel allocations to Crawfordsville, Indiana, as follows:

	Delete	Add
Crawfordsville, Ind.	Channel 275.....	Channel 263.

It appearing, that there is now pending before the Commission an application from FM Station WFMU, Crawfordsville, Indiana, to change the frequency assignment of the station from Channel 275 to Channel 263 to avoid any possible interference to a CAA omni-range station in West Lafayette, Indiana; that Station WFMU's reason for changing frequencies is meritorious; that Channel 263, which is presently unallocated in this area, could be allocated to Crawfordsville, Indiana; that the operation of a station on Channel 263, at Crawfordsville, Indiana, would not cause objectionable interference to any station, existing, proposed or contemplated by present allocations; that if Channel 263 was substituted for Channel 275 such a substitution would not increase or decrease the number of channels allocated to Crawfordsville, Indiana; or to any other city; that such a substitution would not require a change in the channel assignment of any existing FM authorization (not considering the change requested by Station WFMU); and that no existing requirements of the Commission will be affected by said amendment; and

It further appearing, that the nature of the proposed amendment is such as to render unnecessary the public notice and procedure set forth in section 4 (a) of the Administrative Procedure Act; and that for the same reasons this order may be made effective immediately in lieu of the requirements of section 4 (c) of said act; and

It further appearing, that authority for the adoption of said amendment is contained in sections 303 (c), (d), (f), and (r) and 307 (b) of the Communications Act of 1934, as amended;

It is ordered, That, effective immediately, the revised tentative allocation plan for Class B FM broadcast stations is amended so that Channel 263 is substituted for Channel 275 in Crawfordsville, Indiana.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 50-9559; Filed, Oct. 27, 1950; 8:51 a. m.]

VHF SPECIALIZED OPERATIONAL RADIOTELEPHONE MARITIME EXPERIMENTAL CLASS 2 STATIONS

EXTENSION OF LICENSE TERM

In the matter of extension of the license term of outstanding VHF Specialized Operational Radiotelephone Maritime Experimental Class 2 Stations until May 1, 1951.

At a meeting of the Federal Communications Commission held at its offices in Washington, D. C., on the 18th day of October 1950;

The Commission having before it a proposal to extend the license term of Experimental Class 2 VHF Specialized Operational Radiotelephone Maritime stations authorized for the purpose of conducting experimentations in connection with the development and testing of ship to shore and ship to ship radiotelephone systems designed to serve the business and operational needs of ships, which term will end on November 1, 1950; and

It appearing, that it is anticipated that the operation of VHF Specialized Operational Radiotelephone Maritime stations will, within the extension period set forth herein, be removed from the Experimental Service and placed in a "regular" service and that within such period all outstanding experimental licenses for such stations which will be eligible to be converted into "regular" licenses will be required to be so converted; and

It further appearing, that pending such "regularization" and conversion, and in order to minimize the workload on both the licensees of such stations and the Commission, it would be desirable to extend for a temporary period the license term of all such experimental stations;

It is ordered, That the license term of every outstanding Experimental Class 2 VHF Specialized Operational Radiotelephone Maritime station license which normally would expire November 1, 1950, be extended to May 1, 1951, and that each license as extended be in exact accordance with all other terms contained therein;

It is further ordered, That this order shall become effective immediately.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 50-9561; Filed, Oct. 27, 1950; 8:51 a. m.]

EXPERIMENTAL CLASS 2 MARITIME STATIONS OF PETROLEUM INDUSTRY

EXTENSION OF LICENSE TERM

In the matter of extension of the license term of certain outstanding Experimental Class 2 (Maritime) station licenses.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 18th day of October 1950;

The Commission having before it a proposal to extend the license term of Experimental Class 2 (Maritime) stations of the Petroleum Industry authorized for operation on Maritime Mobile frequencies in the 2–3 Mc. band which term will expire on November 1, 1950; and

It appearing, that an extension period of a duration of that proposed will permit the problem of the ultimate disposition of the above-referred to stations to be resolved and will also permit a reasonable period thereafter within which licensees may take such action regarding their outstanding authorizations as may be appropriate; and

It further appearing, that a general extension as herein ordered of the term of such stations is desirable in order to avoid the necessity of individual modification of authorizations covering these stations with the attendant burden on both the licensees and the Commission;

It is ordered, That the license term of every outstanding Experimental Class 2 station of the Petroleum Industry which operates on Maritime Mobile frequencies in the 2–3 megacycle band which normally would expire on November 1, 1950, be extended to May 1, 1951, and that each license as extended be in exact accordance with all other terms contained therein;

It is further ordered, That this order shall become effective immediately.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 50-9562; Filed, Oct. 27, 1950; 8:51 a. m.]

[Change List 58]

CANADIAN BROADCAST STATIONS

LIST OF CHANGES, PROPOSED CHANGES, AND CORRECTIONS IN ASSIGNMENTS

OCTOBER 4, 1950.

Notification under the provisions of Part III, section 2 of the North American Regional Broadcasting Agreement.

List of changes, proposed changes, and corrections in assignments of Canadian Broadcast Stations modifying Appendix containing assignments of Canadian Broadcast Stations (Mimeograph 47214–3) attached to the recommendations of the North American Regional Broadcasting Agreement Engineering Meeting, January 30, 1941.

CANADA

Call letters	Location	Power
CKY.....	Winnipeg, Manitoba.....	1080 kilocycles (delete—see assignment on 580 kc.)
CFHR.....	Hay River, Northwest Territory.....	1230 kilocycles (delete—see assignment on 1490 kc.).

[SEAL] FEDERAL COMMUNICATIONS COMMISSION,
T. J. SLOWIE,
Secretary.

[F. R. Doc. 50-9560; Filed, Oct. 27, 1950; 8:51 a. m.]

[Docket Nos. 9582, 9708]

POPLAR BLUFF BROADCASTING CO. (KWOC) AND LEE BROADCASTING, INC. (WTAD)

ORDER CONTINUING HEARING

In re applications of The Poplar Bluff Broadcasting Company (KWOC) Poplar Bluffs, Missouri, Docket No. 9582, File No. BP-7342; Lee Broadcasting, Inc. (WTAD), Quincy, Illinois, Docket No. 9708, File No. BP-7566; for construction permit.

The Commission having under consideration a motion filed October 6, 1950, by Lee Broadcasting, Inc. (WTAD), requesting a continuance for approximately forty-five days of the hearing which is now scheduled for October 24, 1950; and

It appearing, that two of the consulting radio engineers who may be required to testify as expert witnesses on behalf of Lee Broadcasting, Inc. will be out of the United States at the time of the hearing and will not return until November 1, 1950, or later; and

It further appearing, that counsel for the parties and the Commission have informally expressed consent to the action herein taken, and that the granting of the motion will conduce to the orderly dispatch of the Commission's business and will serve the ends of justice; now therefore,

It is ordered, This 13th day of October 1950 that the motion is granted, and the hearing presently scheduled to begin October 24, 1950, is continued to Tuesday, December 19, 1950, at Washington, D. C.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 50-9554; Filed, Oct. 27, 1950; 8:50 a. m.]

[Docket No. 9658]

SOUTH SAINT PAUL BROADCASTING CO.

ORDER CONTINUING HEARING

In re application of Victor J. Tedesco, Albert S. Tedesco, Antonio S. Tedesco and Nicholas Tedesco, d/b as South Saint Paul Broadcasting Company, South Saint Paul, Minnesota, for construction permit. Docket No. 9658, File No. BP-7576.

The Commission having under consideration a petition filed herein on October 18, 1950, by South Saint Paul Broadcasting Company, requesting: (1) Leave to amend its application herein so as to increase the power of the proposed station from 1 kw to 5 kw, as is more particularly set forth in the amendment attached to said petition; (2) reconsideration by the Commission of its order designating the application for hearing and for a grant of the same without hearing; and (3) a continuance of the hearing now scheduled to begin on November 7, 1950; and

It appearing, that the General Counsel of the Commission has waived the four-day requirement of § 1.745 of the Commission's rules and regulations, so as to permit immediate consideration of the petition herein, and has consented to a grant of the requests for leave to amend and for a continuance of the hearing; and

It further appearing, that the examiner has jurisdiction only over so much of the petition as requests leave to amend and for a continuance of the hearing; and

It further appearing, that good cause has been shown why leave to amend should be granted and why the hearing herein should be continued;

It is ordered, This 20th day of October 1950, that the petition of South Saint Paul Broadcasting Company, in so far as it requests leave to amend and for a continuance of the hearing, is hereby granted, and the amendment attached to said petition, is hereby acepted; and the hearing herein now scheduled to begin on November 7, 1950, is hereby continued indefinitely; and

It is further ordered, That so much of the petition as requests the Commission to reconsider its action in designating the application for hearing and for a grant without hearing, is respectfully referred, to the full Commission for its consideration.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 50-9557; Filed, Oct. 27, 1950; 8:50 a. m.]

[Docket No. 9687]

MONROE BROADCASTING CO.

ORDER CONTINUING HEARING

In re application of Nicholas Tedesco tr/as The Monroe Broadcasting Company, Monroe, Wisconsin, for construction permit; Docket No. 9687, File No. BP-7600.

The Commission having under consideration a petition filed October 3, 1950, by The Monroe Broadcasting Company, applicant herein, requesting a continuance of the hearing now scheduled for October 24, 1950; and

It appearing that on September 27, 1950, Kenneth W. Stuart, Willard R. Schuetze, Edwin W. Schuetze, and Doran Zwygart, doing business as Green County Broadcasting Company, filed an application for permit to construct a station in Monroe, Wisconsin (File No. BP-7842), said applications being for facilities which are mutually exclusive with those applied for by The Monroe Broadcasting Company; and

It appearing that the application of Green County Broadcasting Company was filed more than 20 days before the hearing scheduled for October 24, and that said applicant is entitled to be heard and participate in proceedings herein; and

Counsel for The Monroe Broadcasting Company, Green County Broadcasting Company, and the Commission, having consented to a continuance of the hearing to December 6, 1950;

It is ordered, This the 18th day of October 1950, that the petition of Nicholas Tedesco trading as The Monroe Broadcasting Company, for continuance of the hearing be and it is hereby granted and the hearing now scheduled for October 24, 1950, is continued to December 6, 1950, at 10:00 a. m., in the offices of the Commission at Washington, D. C.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 50-9555; Filed, Oct. 27, 1950; 8:50 a. m.]

[Docket No. 9689]

MID-CAROLINA BROADCASTING CO. (WSAT)

ORDER CONTINUING HEARING

In re application of Mid-Carolina Broadcasting Company (WSAT), Salisbury, North Carolina, for construction permit; Docket No. 9689, File No. BP-7584.

The Commission having under consideration a petition filed October 9, 1950, by Mid-Carolina Broadcasting Company, requesting indefinite continuance of the hearing in the above-entitled proceeding, now scheduled to commence on October 27, 1950, in Washington, D. C.; and

It appearing, that the applicant has filed a petition for reconsideration and grant of its application without a hearing and such petition is now pending before the Commission; and

It further appearing, that there is no other party to the proceeding; and the General Counsel has informally consented to the waiver of § 1.745 of the Commission's rules and agreed to an immediate consideration and grant of the petition;

It is ordered, This 13th day of October, 1950, that the petition, be, and it is hereby, granted; and the hearing herein presently scheduled for October 27, 1950, be, and it is hereby continued to a date to be fixed by subsequent order.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 50-9552; Filed, Oct. 27, 1950; 8:50 a. m.]

[Docket No. 9758]

COASTWISE LINE

ORDER CONTINUING HEARING

In the matter of petition of the Coastwise Line requesting reconsideration by the Commission of its denial of the application of Coastwise Line for relief from forfeitures imposed in connection with the sailing of the SS *William Black Yates* in violation of sections 351 and 353 of the Communications Act of 1934, as amended; Docket No. 9758.

The Commission having under consideration a petition filed October 12, 1950 by the Acting Chief, Safety & Special Radio Services Bureau, Federal Communications Commission, requesting a continuance of the hearing in the

above-entitled matter presently scheduled for October 17, 1950, at Washington, D. C.; and

It appearing, that good cause has been shown in support of such petition and Coastwise Line, the only party to the proceeding has consented to the waiver of § 1.745 of the Commission's rules and agreed to an immediate consideration and grant of the petition;

It is ordered, This 13th day of October 1950, that the petition be, and it is hereby granted; and the hearing on the above-entitled matter is hereby continued to January 4, 1951.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 50-9553; Filed, Oct. 27, 1950; 8:50 a. m.]

[Docket No. 9776]

BELEN BROADCASTING CORP. (KENE)

ORDER CHANGING LOCATION OF HEARING

In the matter of Belen Broadcasting Corporation (KENE) Belen, New Mexico, for license to cover construction permit; Docket Nos. 9776, File No. BL-3709.

The Commission having under consideration a letter dated September 9, 1950 from M. Ralph Brown, Counsel for Belen Broadcasting Corporation (KENE), the applicant in the above-entitled matter, indicating that Albuquerque, New Mexico, would be a more convenient location for the hearing in the above-entitled matter than would Belen, New Mexico, where the said matter is presently scheduled to be heard on Tuesday, November 14, 1950; and

It appearing, that the applicant is the only party to this proceeding; and that Commission Counsel has no objection to such a change in the location of place of hearing in the above-entitled matter;

It is ordered, This 18th day of October 1950, that the location for the hearing in the above-entitled matter be, and it is hereby, changed from Belen, New Mexico, to Albuquerque, New Mexico, at 10:00 o'clock a. m., November 14, 1950.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 50-9556; Filed, Oct. 27, 1950; 8:50 a. m.]

[Docket No. 9816]

AMERICAN TELEPHONE AND TELEGRAPH CO. ET AL.

ORDER INSTITUTING INVESTIGATION

In the matter of American Telephone and Telegraph Company, et al., allocation of usage of intercity video transmission facilities; Docket No. 9816.

At a session of the Federal Communications Commission, held at its offices in Washington, D. C., on the 18th day of October 1950;

The Commission, having under consideration effective tariff schedules of American Telephone and Telegraph Company ("AT&T") and other Bell System Companies, as set forth in the appendix hereto which is made a part hereof, providing for the allocation of usage of available intercity video transmission facilities of such Bell System Companies where necessary to meet the requirements of two or more customers for monthly service; and, the allocations of usage of video facilities made by American Telephone and Telegraph Company for the calendar quarter, September 30 to December 31, 1950, inclusive; and also having under consideration a formal complaint filed with the Commission on September 28, 1950, by Allen B. Du Mont Laboratories, Inc., operators of Du Mont Television Network, against American Telephone and Telegraph Company and other Bell System Companies, alleging that allocations of usage of certain facilities of the Long Lines Department of American Telephone and Telegraph Company, made pursuant to Paragraph II-A-4 of AT&T Tariff FCC No. 216, are unlawful under the Communications Act of 1934, as amended, in that they are alleged to be unjust, unreasonable and discriminatory, and unduly and unreasonably advantageous to National Broadcasting Company and Columbia Broadcasting System, and among other things, requesting the Commission to institute an investigation into the tariff schedules governing allocation of video transmission facilities; and, a Petition filed with the Commission on September 29, 1950, by American Broadcasting Company, alleging that the above-mentioned allocation are unlawful in that they fail to meet the requirements of paragraph II-A-4 of AT&T Tariff FCC No. 216, that usage be "equitably allocated", and requesting that the Commission issue an "interpretative rule" pursuant to section 4 (a) of the Administrative Procedure Act, that such tariff requires a "pro rata" allocation of usage among customers;

It appearing, that opportunity of customers for intercity video transmission service to compete effectively in the field of television broadcasting may be materially affected by allocations of usage of available facilities, made pursuant to the above-mentioned tariff schedules of the Bell System Companies;

It further appearing, that the allocations of usage of video channels for the calendar quarter September 30 to December 31, 1950, inclusive, made pursuant to Paragraph II-A-4 of AT&T Tariff FCC No. 216, show that of a total of 399 possible hours of usage per week of 19 intercity video channels of the Long Lines Department during the hours of 8 p. m. to 11 p. m. daily (so-called preferred hours), National Broadcasting Company was allocated 160 hours per week; Columbia Broadcasting System 114 hours per week; American Broadcasting Company 49 hours per week, and Du Mont Television Network 36 hours per week; with 40 hours per week remaining open for further assignment;

It further appearing, that, pursuant to the provisions of section 208 of the Communications Act of 1934, as amended, and § 1.577 of the Commission's rules and regulations, copies of the above complaint of Allen B. Du Mont Laboratories, Inc. against American Telephone and Telegraph Company et al. have been served upon the defendants named therein, together with a Notice of Complaint requiring satisfaction of said complaint, or answer in writing not later than October 30, 1950; that Docket No. 9806 has been assigned to that proceeding, but that the institution of an investigation and hearing with respect to the above tariff schedules should not await the filing of further pleadings in that Docket;

It further appearing, that the problems presented by the above petition of American Broadcasting Company involve basic questions relating to the public interest which should be decided only after public notice and hearing;

It is ordered, That, pursuant to sections 201, 202, 203, 205, and 403 of the Communications Act of 1934, as amended, an investigation is instituted into the lawfulness of the above-mentioned tariff schedules of American Telephone and Telegraph Company and of the Bell System Companies identified in the attachment hereto, governing the allocation of usage of intercity video transmission facilities;

It is further ordered, That American Telephone and Telegraph Company, the Bell System Companies named in the attachment hereto and all other carriers concurring in AT&T Tariff FCC No. 216, are made parties respondent in this proceeding;

It is further ordered, That without in any way limiting the scope of this investigation, it shall include inquiry into the following specific matters:

(1) The lawfulness under sections 201 and 202 of the Communications Act of 1934, as amended, of the above tariff schedules of the Bell System Companies, providing for allocation of usage of available intercity video transmission facilities to meet the requirements of two or more customers for monthly service;

(2) The allocations of usage of available intercity video transmission channels made by respondent, American Telephone and Telegraph Company, for the calendar quarter, September 30 to December 31, 1950, pursuant to paragraph II-A-4 of AT&T Tariff FCC No. 216; the bases upon which such allocations were made, and respondent's justification for such allocations; and, the bases upon which future allocations would be made by all respondent carriers, and respondents' justification therefor;

(3) Whether, in the light of the findings made in (2) above, the tariff schedules of respondent carriers fail properly to reflect the practices followed or that will be followed by said carriers with respect to the allocation of usage of intercity video channels, in violation of section 203 of the Communications Act and § 61.55 (f) of the Commission's rules and regulations;

(4) Whether, by virtue of the allocations referred to in (2) above, respondent, American Telephone and Telegraph Company, in violation of section 201 (a) of the Communications Act, has failed or is failing to furnish intercity video transmission service on reasonable request therefor to customers for such service;

(5) Whether the allocations referred to in (2) above are unjust and unreasonable in violation of section 201 (b) of the Communications Act of 1934, as amended;

(6) Whether, by virtue of the allocations referred to in (2) above, respondent, American Telephone and Telegraph Company, in violation of section 202 (a) of the Communications Act of 1934, as amended, is making an unjust or unreasonable discrimination, is making or giving any undue or unreasonable preference or advantage to any customer for video transmission service, or is subjecting any such customers, or any locality to any undue or unreasonable prejudice or disadvantage.

(7) The impact of the allocations of usage of intercity video channels made in the manner and upon the basis determined in (2) above, upon present and future competitive operations in the field of network television broadcasting;

(8) Whether, in the light of the facts developed in connection with the foregoing, the Commission, pursuant to the provisions of section 205 of the Communications Act, should prescribe new, additional or modified tariff regulations governing the allocation of usage of intercity video transmission facilities of the Bell System Companies, and, if so, the nature of such regulations;

(9) Whether, pursuant to the provisions of section 205 of the Communications Act, the Commission should prescribe tariff regulations classifying persons or organizations who are, or may be, customers for intercity video transmission service (i. e., television networks, TV broadcast station licensees, persons engaged in theater TV, etc.), and a basis for allocating usage of facilities among such classes of customers; and if so, the nature of such regulations.

It is further ordered, That the petition of American Broadcasting Company for an "interpretative rule" with respect to the meaning of paragraph II–A–4 of AT&T Tariff FCC No. 216 is denied, insofar as such petition requests an immediate ruling, without public notice or hearing, under section 4 (a) of the Administrative Procedure Act;

It is further ordered, That American Broadcasting Company, Columbia Broadcasting System, Allen B. Du Mont Laboratories, Inc., National Broadcasting Company and all TV broadcast station permittees and licensees who are now, or may be, customers for intercity video service are hereby given leave to intervene and participate fully herein, upon filing of notice of intention to do so, not later than November 1, 1950;

It is further ordered, That hearings be held in this proceeding at the offices of the Commission in Washington, D. C., beginning at 10 a. m. on the 20th day of November, 1950; that Hugh B. Hutchison is assigned to preside at such hearings; and that the presiding officer shall certify the record to the Commission for decision and shall not prepare either a Recommended or Initial Decision.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

No. 210——6

Tariff Provisions of the American Telephone and Telegraph Company and Other Bell System Companies Relating to Allocation of Video Transmission Facilities

Carrier	Tariff, F. C. C. No.	Page	Paragraph
American Telephone & Telegraph Co.	216	1st Rev. pg. 8	II. A. 4.
The Bell Telephone Co. of Pennsylvania	22	2d Rev. pg. 8	II. A. 4.
The Chesapeake & Potomac Telephone Co.	22	2d Rev. pg. 8	II. A. 4.
The Chesapeake & Potomac Telephone Co. of Baltimore City	22	3d Rev. pg. 8	II. A. 4.
The Chesapeake & Potomac Telephone Co. of Virginia	20	2d Rev. pg. 8	II. A. 4.
The Cincinnati & Suburban Bell Telephone Co.	22	2d Rev. pg. 8	II. A. 4.
The Diamond State Telephone Co.	21	Orig. pg. 8	II. A. 4.
Illinois Bell Telephone Co.	21	2d Rev. pg. 8	II. A. 4.
Indiana Bell Telephone Co.	20	1st Rev. pg. 8	II. A. 4.
Michigan Bell Telephone Co.	21	2d Rev. pg. 8	II. A. 4.
Mountain States Telephone & Telegraph Co.	35	Orig. pg. 8	II. A. 4.
New England Telephone & Telegraph Co.	23	3d Rev. pg. 7	II. A. 4.
New Jersey Bell Telephone Co.	24	1st Rev. pg. 8	II. A. 5.
New York Telephone Co.	20	2d Rev. pg. 8	B. 4.
Northwestern Bell Telephone Co.	28	1st Rev. pg. 8	II. A. 4.
Ohio Bell Telephone Co.	21	3d Rev. pg. 8	II. A. 4.
The Pacific Telephone & Telegraph Co.	97	2d Rev. pg. 9	II. A. 5.
Southern Bell Telephone & Telegraph Co.	31	1st Rev. pg. 8	II. A. 4.
The Southern New England Telephone Co.	22	1st Rev. pg. 8	II. A. 4.
Southwestern Bell Telephone Co.	35	2d Rev. pg. 8	II. A. 4.
Wisconsin Telephone Co.	21	2d Rev. pg. 8	II. A. 5.

[F. R. Doc. 50–9558; Filed, Oct. 27, 1950; 8:50 a. m.]

FEDERAL POWER COMMISSION

[Docket No. G–1293]

OHIO GAS CO.

NOTICE OF FINDINGS AND ORDER

OCTOBER 24, 1950.

Notice is hereby given that, on October 18, 1950, the Federal Power Commission issued its findings and order entered October 17, 1950, granting permission and approval for abandonment of facilities in the above-designated matter.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 50–9536; Filed, Oct. 27, 1950; 8:46 a. m.]

[Docket Nos. G–1434, 1443]

CITIES SERVICE GAS CO. AND OHIO FUEL GAS CO.

NOTICE OF FINDINGS AND ORDERS

OCTOBER 24, 1950.

Notice is hereby given that, on October 20, 1950, the Federal Power Commission issued its findings and orders entered October 19, 1950, issuing certificates of public convenience and necessity in the above-designated matters.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 50–9537; Filed, Oct. 27, 1950; 8:47 a. m.]

[Docket No. G–1454]

MISSISSIPPI RIVER FUEL CORP.

NOTICE OF FINDINGS AND ORDER

OCTOBER 24, 1950.

Notice is hereby given that, on October 20, 1950, the Federal Power Commission issued its findings and order entered October 19, 1950, issuing a temporary certificate of public convenience and necessity in the above-designated matter.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 50–9534; Filed, Oct. 27, 1950; 8:46 a. m.]

[Docket No. G–1472]

PANHANDLE EASTERN PIPE LINE CO.

NOTICE OF FINDINGS AND ORDER

OCTOBER 24, 1950.

Notice is hereby given that, on October 18, 1950, the Federal Power Commission issued its findings and order entered October 17, 1950, issuing certificate of public convenience and necessity in the above-designated matter.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 50–9535; Filed, Oct. 27, 1950; 8:46 a. m.]

ARKANSAS LOUISIANA GAS CO.

NOTICE OF ORDER

OCTOBER 24, 1950.

Notice is hereby given that, on October 18, 1950, the Federal Power Commission issued its order entered October 17, 1950, approving and directing disposition of amounts classified in Account 100.5, Gas Plant Acquisition Adjustments, and Account 107, Gas Plant Adjustments, in the above-designated matter.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 50–9542; Filed, Oct. 27, 1950; 8:47 a. m.]

NATURAL GAS PIPELINE CO. OF AMERICA

NOTICE OF ORDER

OCTOBER 24, 1950.

Notice is hereby given that, on October 18, 1950, the Federal Power Commission

issued its order entered October 17, 1950, approving and directing disposition of amounts classified in Account 107, Gas Plant Adjustments, in the above-designated matter.

[SEAL] LEON M. FUQUAY, *Secretary.*

[F. R. Doc. 50-9543; Filed, Oct. 27, 1950; 8:47 a. m.]

[Project No. 935]

PACIFIC POWER & LIGHT CO.

NOTICE OF ORDER

OCTOBER 24, 1950.

Notice is hereby given that, on October 18, 1950, the Federal Power Commission issued its order entered October 17, 1950, approving Exhibits L and M as part of the license in the above-designated matter.

[SEAL] LEON M. FUQUAY, *Secretary.*

[F. R. Doc. 50-9541; Filed, Oct. 27, 1950; 8:47 a. m.]

[Docket No. E-6315]

OTTER TAIL POWER CO.

NOTICE OF ORDER

OCTOBER 24, 1950.

Notice is heregy given that, on October 17, 1950, the Federal Power Commission issued its order entered October 17, 1950, authorizing and approving issuance of securities in the above-designated matter.

[SEAL] LEON M. FUQUAY, *Secretary.*

[F. R. Doc. 50-9540; Filed, Oct. 27, 1950; 8:47 a. m.]

[Docket No. E-6313]

GULF PUBLIC SERVICE CO., INC.

NOTICE OF ORDER

OCTOBER 24, 1950.

Notice is hereby given that, on October 19, 1950, the Federal Power Commission issued its order entered October 19, 1950, accepting offer of settlement and termination proceedings in the above-designated matter.

[SEAL] LEON M. FUQUAY, *Secretary.*

[F. R. Doc. 50-9539; Filed, Oct. 27, 1950; 8:47 a. m.]

[Docket No. G-991]

UNITED GAS PIPE LINE CO.

NOTICE OF ORDER

OCTOBER 24, 1950.

Notice is hereby given that, on October 18, 1950, the Federal Power Commission issued its order entered October 17, 1950, amending order of April 28, 1948, published in the FEDERAL REGISTER on May 5, 1948 (13 F. R. 2419), issuing certificate of public convenience and necessity in the above-designated matter.

[SEAL] LEON M. FUQUAY, *Secretary.*

[F. R. Doc. 50-9538; Filed, Oct. 27, 1950; 8:47 a. m.]

[Docket No. G-1485]

EL PASO NATURAL GAS CO.

ORDER FIXING DATE OF HEARING

OCTOBER 20, 1950.

On September 18, 1950, El Paso Natural Gas Company (Applicant), a Delaware corporation with its principal office at El Paso, Texas, filed an application for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act, as amended, authorizing the construction and operation of certain natural gas facilities subject to the jurisdiction of the Commission, all as more fully described in such application on file with the Commission and open to the public.

Applicant has requested that this application be heard under the shortened procedure provided by § 1.32 (b) of the Commission's rules of practice and procedure (18 CFR 1.32 (b)) for non-contested proceedings, and it appears to be a proper one for disposition under the aforesaid rule, provided no request to be heard, protest or petition raising an issue of substance if filed subsequent to the giving of due notice of the filing of the application including publication in the FEDERAL REGISTER on October 6, 1950 (15 F. R. 6768).

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, as amended, and the Commission's rules of practice and procedure, a public hearing be held on November 8, 1950, at 9:30 a. m. (e. s. t.), in the Hearing Room of the Federal Power Commission, 1800 Pennsylvania Avenue, N. W., Washington, D. C., concerning the matters involved and the issues presented by such application: *Provided, however,* That the Commission may, after a non-contested hearing, forthwith dispose of the proceeding pursuant to the provisions of § 1.32 (b) of the Commission's rules of practice and procedure.

(B) Interested State commissions may participate as provided by §§ 1.8 and 1.37 (f) (18 CFR 1.8 and 1.37 (f)) of the said rules of practice and procedure.

Date of issuance: October 23, 1950.

By the Commission.

[SEAL] LEON M. FUQUAY, *Secretary.*

[F. R. Doc. 50-9529; Filed, Oct. 27, 1950; 8:46 a. m.]

[Docket No. E-6325]

ATHOL GAS AND ELECTRIC CO. ET. AL.

NOTICE OF APPLICATION

OCTOBER 24, 1950.

In the matter of Athol Gas and Electric Co., Central Massachusetts Electric Co., Gardner Electric Light Co., The Spencer Gas Co., Wachusett Electric Co., Winchendon Electric Light and Power Co., Worcester Suburban Electric Co., and Worcester County Electric Co., Docket No. E-6325.

Take notice that on October 20, 1950, a joint application was filed with the Federal Power Commission, pursuant to section 203 of the Federal Power Act by Athol Gas and Electric Company (Athol), Central Massachusetts Electric Company (Central Massachusetts), Gardner Electric Light Company (Gardner), The Spencer Gas Company (Spencer), Wachusett Electric Company (Wachusett), Winchendon Electric Light and Power Company (Winchendon), Worcester Suburban Electric Company (Worcester Suburban), and Worcester County Electric Company (Worcester County), all corporations organized under the laws of the State of Massachusetts and doing business in said State. The applicants seek an order authorizing the merger of the corporate entities and all of their electric operating facilities with and into Worcester County so that the latter will own all the assets and have the liabilities of the eight present corporations, except, however, for the gas properties of Athol, Spencer, Wachusett, Worcester Suburban, and Worcester County, which will have been transferred to others prior to said merger. Following the separation of the gas properties from the electric properties, Worcester County proposes to issue 366,571 additional shares of its Capital Stock of an aggregate par value of $9,164,274 in substitution for the Capital Stock of Athol, Central Massachusetts, Gardner, Spencer, Wachusett, Winchendon, and Worcester Suburban; all as more fully appears in the application on file with the Commission.

Any person desiring to be heard, or to make any protest with reference to said application should, on or before the 10th day of November 1950, file with the Federal Power Commission, Washington 25, D. C., a petition or protest in accordance with the Commission's rules of practice and procedure. The application is on file with the Commission for public inspection.

[SEAL] LEON M. FUQUAY, *Secretary.*

[F. R. Doc. 50-9533; Filed, Oct. 27, 1950; 8:46 a. m.]

[Docket No. G-1501]

CRYSTAL CITY GAS CO.

NOTICE OF APPLICATION

OCTOBER 24, 1950.

Take notice that Crystal City Gas Company (Applicant), a New York Corporation, of 26 East Market Street, Corning, New York, filed on October 3, 1950, an application for (1) an order pursuant to section 7 (a) of the Natural Gas Act, as amended, requiring and directing Home Gas Company to deliver to Applicant a supply of natural gas required to render more efficient service to its present and future customers in the Corning-Painted Post area, and (2) for a

certificate of public convenience and necessity pursuant to section 7 (c) of the Natural Gas Act authorizing Applicant to construct and operate the facilities necessary to receive said supply of natural gas.

The application states that Applicant desires to purchase 750 Mcf of natural gas per day from Home Gas Company at a connection to be made in the transmission lines of Home Gas Company at a point where said transmission lines cross U. S. Highway Route 15 in the Town of Campbell, Steuben County, New York. The application further states that Applicant's main source of supply is from Allegany Gas Company and is received into Applicant's Corning-Painted Post distribution system near the southerly limits of Corning, New York, which point is at the opposite end of Applicant's distribution system from the proposed line connecting with Home Gas Company. It is stated that under presently existing conditions, customers at the end of Applicant's distribution system in Painted Post and vicinity are, especially on peak days, unable to receive a sufficient supply of gas because Applicant's system lacks the line capacity to carry sufficient quantities of gas to meet its present and future demands in this area. The application states that a supply of gas from Home Gas Company connecting with Applicant's Corning distribution system as proposed will alleviate the necessity of construction by Applicant of additional pipe lines through an already extremely congested city area and will give Applicant a new source of supply at the exact locality where Applicant's present Corning distribution is already overburdened and will enable Applicant to render more efficient service to its present and future customers in this area.

It is further stated that a source of supply from Home Gas Company will provide Applicant with an alternate source of supply in the event of damage to its present distribution system during a war or other emergency.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before the 13th day of November, 1950. The application is on file with the Commission for public inspection.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 50-9530; Filed, Oct. 27, 1950; 8:46 a. m.]

[Docket No. G-1503]

NATURAL GAS PIPELINE CO. OF AMERICA

NOTICE OF APPLICATION

OCTOBER 24, 1950.

Take notice that Natural Gas Pipeline Company of America (Applicant), a Delaware Corporation, of 20 North Wacker Drive, Chicago 6, Illinois, filed on October 6, 1950, an application (a) for a certificate of public convenience and necessity authorizing the construction and operation of a new meter and regulator station at a point on Applicant's present 8-inch line now serving the City of Rockford, Illinois, from Applicant's 20-inch line in Winnebago County, Illinois, and (b) for approval of abandonment and sale to Central Illinois Electric and Gas Company (Central Illinois) of Applicant's present meter and regulator station near Rockford, Illinois, together with approximately 7,531 feet of the 8-inch lateral line serving such station, both pursuant to section 7 of the Natural Gas Act, as amended.

The application recites that Applicant is now selling gas to Central Illinois, a distributor of natural gas for resale in Rockford, Freeport, Pecatonica, and environs, all in Illinois; that Central Illinois desires to add to its distribution system by construction of a belt line along the southern and southwestern edge of Rockford; and that in order to provide delivery to this new belt line, Central Illinois has requested an additional point of delivery approximately 7,531 feet southeast of the present delivery point at Rockford.

The application further recites that although Applicant recognizes the advantage of the new point of take-off for Central Illinois, Applicant does not desire to furnish two points of delivery. The change in point of delivery will enable Central Illinois to achieve the same objective and will allow Central Illinois to leave the purchased facilities in place and use them as a part of its distribution system and continue gas service at the present point.

The estimated total over-all cost of the facilities to be constructed is approximately $37,790. The amount to be received from the sale of the facilities is approximately $35,000.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before the 13th day of November 1950.

The application is on file with the Commission for public inspection.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 50-9531; Filed, Oct. 27, 1950; 8:46 a. m.]

[Docket No. G-1504]

NATURAL GAS PIPELINE CO. OF AMERICA

NOTICE OF APPLICATION

OCTOBER 24, 1950.

Take notice that Natural Gas Pipeline Company of America (Applicant), a Delaware corporation of 20 North Wacker Drive, Chicago 6, Illinois, filed on October 6, 1950, an application for a certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act authorizing the construction and operation of a tap and meter and regulator facilities on the present site of Applicant's meter and regulator station through which delivery of gas is now being made to Wisconsin Southern Gas Company from Applicant's 20-inch line in McHenry County, Illinois.

The application states that Applicant has been requested by Chicago District Pipeline Company to construct the above-described facilities so that gas service may be made available for Hebron and Richmond, Illinois.

The Chicago District Pipeline Company has been requested by Western United Gas and Electric Company to establish the additional point of delivery.

The application further states that Hebron and Richmond, Illinois are not now served by natural gas facilities and that by means of the facilities proposed Western United will furnish such service. It is stated that the new delivery point will not affect in any way the present aggregate allocations of gas by Applicant to Chicago District Pipeline Company and by Chicago District to Western United.

Estimated total over-all cost of the facilities to be constructed is $4,830. Applicant will finance the construction from cash on hand but will be reimbursed by Chicago District Pipeline Company.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before the 13th day of November 1950. The application is on file with the Commission for public inspection.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 50-9532; Filed, Oct. 27, 1950; 8:46 a. m.]

[Docket No. G-1511]

NORTHERN NATURAL GAS CO.

NOTICE OF APPLICATION

OCTOBER 24, 1950.

Take notice that Northern Natural Gas Company (Applicant), a Delaware corporation, of the Aquila Court Building, Omaha, Nebraska, filed on October 16, 1950, an application for a certificate of public convenience and necessity pursuant to section 7 (c) of the Natural Gas Act authorizing the construction and operation of approximately 1.5 miles of 2⅜ inch O. D. branch pipe line to serve the National By-Products, Inc., rendering plant near La Platte, Nebraska, and a measuring and regulating station near the rendering plant site.

The application recites that the service to be rendered to the rendering plant will constitute a direct main line industrial sale on an interruptible basis pursuant to the terms of the contract entered into between Applicant and National By-Products, Inc. The application shows that estimated maximum daily deliveries in the first five years of service will be 200 Mcf of gas, and that annual sales will amount to 38,400 Mcf of gas.

It is also stated that the operation of the proposed facilities for rendering service on an interruptible basis will not impair Applicant's ability to deliver Contract Demand Volumes of gas when required by its gas utility customers.

The estimated total over-all capital cost of construction of the facilities proposed is $12,000, which will be financed from the general funds of Applicant.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before the 13th day of November, 1950. The application is on file with the Commission for public inspection.

[SEAL] LEON M. FUQUAY, *Secretary.*

[F. R. Doc. 50-9547; Filed, Oct. 27, 1950; 8:48 a. m.]

INTERSTATE COMMERCE COMMISSION

[4th Sec. Application 25516]

PROPORTIONAL RATES ON NEWSPRINT PAPER TO TEXAS

APPLICATION FOR RELIEF

OCTOBER 25, 1950.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: D. Q. Marsh, Agent, for carriers parties to his tariffs I. C. C. Nos. 3899 and 3912.

Commodities involved: Newsprint paper, carloads, originating in Canada.

From: Upper Mississippi River crossings.

To: Points in Texas.

Grounds for relief: Competition with rail carriers.

Schedules filed containing proposed rates: D. Q. Marsh's tariff I. C. C. No. 3899, Supplement No. 21; D. Q. Marsh's tariff I. C. C. No. 3912, Supplement No. 13.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission, Division 2.

[SEAL] W. P. BARTEL, *Secretary.*

[F. R. Doc. 50-9522; Filed, Oct. 27, 1950; 8:45 a. m.]

[4th Sec. Application 25517]

SYNTHETIC RUBBER FROM SOUTHWEST TO SOUTH PALMYRA, N. Y.

APPLICATION FOR RELIEF

OCTOBER 25, 1950.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: D. Q. Marsh, Agent, for carriers parties to his tariffs I. C. C. Nos. 3752 and 3906.

Commodities involved: Rubber, artificial, synthetic or neoprene, crude, carloads.

From: Points in Louisiana and Texas.

To: South Palmyra, N. Y.

Grounds for relief: Competition with rail carriers. Circuitous routes.

Schedules filed containing proposed rates: D. Q. Marsh's tariff I. C. C. No. 3752, Supplement No. 501; D. Q. Marsh's tariff I. C. C. No. 3906, Supplement No. 22.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission, Division 2.

[SEAL] W. P. BARTEL, *Secretary.*

[F. R. Doc. 50-9523; Filed, Oct. 27, 1950; 8:45 a. m.]

[4th Sec. Application 25518]

SYNTHETIC RUBBER FROM SOUTHWEST TO OELWEIN, IOWA

APPLICATION FOR RELIEF

OCTOBER 25, 1950.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: D. Q. Marsh, Agent, for carriers parties to his tariffs I. C. C. Nos. 3752 and 3906 and Agent W. P. Emerson's I. C. C. No. 378.

Commodities involved: Rubber, artificial, synthetic or neoprene, carloads.

From: Points in Louisiana and Texas.

To: Oelwein, Iowa.

Grounds for relief: Competition with rail carriers. Circuitous routes.

Schedules filed containing proposed rates: D. Q. Marsh's tariff I. C. C. No. 3752, Supplement No. 502; D. Q. Marsh's tariff I. C. C. No. 3906, Supplement No. 23; W. P. Emerson's tariff I. C. C. No. 378, Supplement No. 106.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission, Division 2.

[SEAL] W. P. BARTEL, *Secretary.*

[F. R. Doc. 50-9524; Filed, Oct. 27, 1950; 8:45 a. m.]

[4th Sec. Application 25519]

DRY BATTERIES FROM OHIO TO THE EAST

APPLICATION FOR RELIEF

OCTOBER 25, 1950.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: L. C. Schuldt, Agent, for and on behalf of carriers parties to his tariff I. C. C. No. 3758, pursuant to fourth-section order No. 9800.

Commodities involved: Batteries, electric, dry, in carloads.

From: Cleveland and Fremont, Ohio.

To: Jersey City, N. J., and New York, N. Y.

Grounds for relief: Circuitous routes.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission, Division 2.

[SEAL] W. P. BARTEL, *Secretary.*

[F. R. Doc. 50-9525; Filed, Oct. 27, 1950; 8:45 a. m.]

[4th Sec. Application 25520]

MAGAZINES FROM CHICAGO, ILL., TO THE EAST

APPLICATION FOR RELIEF

OCTOBER 25, 1950.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: L. C. Schuldt, Agent, for and on behalf of carriers parties to his tariff I. C. C. No. 3758, pursuant to fourth-section order No. 9800.

Commodities involved: Magazines or periodicals, etc., in carloads.

From: Chicago, Ill.

To: Points in trunk-line and New England territories.

Grounds for relief: Circuitous routes.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission, Division 2.

[SEAL] W. P. BARTEL, *Secretary.*

[F. R. Doc. 50-9526; Filed, Oct. 27, 1950; 8:45 a. m.]

[4th Sec. Application 25521]

MAGAZINES FROM DES MOINES, IOWA, TO OFFICIAL TERRITORY

APPLICATION FOR RELIEF

OCTOBER 25, 1950.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: L. E. Kipp, Agent, for carriers parties to tariffs named below.

Commodities involved: Magazines and periodicals, in carloads.

From: Des Moines, Iowa.

To: Points in Official territory.

Grounds for relief: Competition with motor carriers.

Schedules filed containing proposed rates: L. E. Kipp's tariff I. C. C. No. A-3723, Supplement No. 20; L. E. Kipp's tariff I. C. C. No. A-3745, Supplement No. 10.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission, Division 2.

[SEAL] W. P. BARTEL, *Secretary.*

[F. R. Doc. 50-9527; Filed, Oct. 27, 1950; 8:45 a. m.]

[4th Sec. Application 25522]

PETROLEUM AND PETROLEUM PRODUCTS FROM AND TO POINTS IN THE SOUTH

APPLICATION FOR RELIEF

OCTOBER 25, 1950.

The Commission is in receipt of the above-entitled and numbered application for relief from the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Filed by: R. E. Boyle, Jr., Agent, for Atlantic Coast Line Railroad Company and other carriers named in the application.

Commodities involved: Petroleum and petroleum products, in tank-car loads.

From: Camp Croft, S. C., Port Wentworth and Savannah, Ga.

To: Points in North Carolina and Georgia.

Grounds for relief: Competition with rail carriers. Circuitous routes.

Schedules filed containing proposed rates: C. A. Spaninger's tariff I. C. C. No. 1065, Suplement No. 184.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 15 days from the date of this notice. As provided by the general rules of practice of the Commission, Rule 73, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing. If because of an emergency a grant of temporary relief is found to be necessary before the expiration of the 15-day period, a hearing, upon a request filed within that period, may be held subsequently.

By the Commission, Division 2.

[SEAL] W. P. BARTEL, *Secretary.*

[F. R. Doc. 50-9528; Filed, Oct. 27, 1950; 8:45 a. m.]

[Sec. 5a Application 27]

MIDWEST MOTOR CARRIERS BUREAU, INC.

APPLICATION FOR APPROVAL OF AGREEMENT

OCTOBER 25, 1950.

The Commission is in receipt of the above-entitled and numbered application for approval of an agreement under the provisions of section 5a of the Interstate Commerce Act.

Filed October 23, 1950, by: J. R. Sewell, Attorney-in-fact, Suite 504 Commerce Exchange Bldg., Oklahoma City 2, Okla.

Agreement involved: An agreement between and among motor common carriers, members of the Midwest Motor Carriers Bureau, Inc., relating to rules and procedures for the joint consideration, initiation, or establishment of rates, classifications, allowances, and charges, and practices pertaining thereto, governing the transportation of household goods and oil-field equipment and supplies in interstate or foreign commerce between points in the United States.

The complete application may be inspected at the office of the Commission in Washington, D. C.

Any interested person desiring the Commission to hold a hearing upon such application shall request the Commission in writing so to do within 20 days from the date of this notice. As provided by the general rules of practice of the Commission, persons other than applicants should fairly disclose their interest, and the position they intend to take at the hearing with respect to the application. Otherwise, the Commission, in its discretion, may proceed to investigate and determine the matters involved in such application without further or formal hearing.

By the Commission, Division 2.

[SEAL] W. P. BARTEL, *Secretary.*

[F. R. Doc. 50-9566; Filed, Oct. 27, 1950; 8:52 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 70-2487]

NIAGARA MOHAWK POWER CORP.

ORDER GRANTING APPLICATION

At a regular session of the Securities and Exchange Commission, held at its office in the city of Washington, D. C., on the 23d day of October A. D. 1950.

Niagara Mohawk Power Corporation ("Niagara Mohawk"), a subsidiary of Niagara Hudson Power Corporation, a registered holding company, having filed an application, and amendments thereto, pursuant to section 6 (b) of the Public Utility Holding Company Act of 1935 for exemption from the provisions of section 6 (a) thereof of the issue and sale by Niagara Mohawk, pursuant to the competitive bidding requirements of Rule U-50, of $40,000,000 principal amount of General Mortgage Bonds, ____ percent Series, due October 1, 1980, the proceeds of which will be used by Niagara Mohawk

(1) to pay bank loan indebtedness of $20,000,000 incurred to provide funds for construction expenditures, (2) to refund the $15,689,000 principal amount of The Niagara Falls Power Company First and Refunding Mortgage Bonds, 3½ percent Series due 1966, to be assumed by Niagara Mohawk upon the merger of that company with Niagara Mohawk (an application-declaration with respect to such merger having been granted and permitted to become effective by order of the Commission dated October 4, 1950) and (3) to the extent remaining, for additional utility plant, particularly steam-electric and hydro-electric generat'ng capacity; and

The Public Service Commission of the State of New York, having jurisdiction over the issue and sale of the proposed bonds and having authorized Niagara Mohawk to invite proposals for the purchase of said bonds; and Niagara Mohawk having requested permission to invite bids for such bonds on October 24, 1950 and to open the bids received on October 31, 1950; and

Said application having been filed on September 27, 1950, and the last amendment thereto having been filed on October 19, 1950, and notice of said filing having been duly given in the form and manner prescribed by Rule U-23 promulgated pursuant to said act and the Commission not having received a request for hearing with respect to said application within the period specified, or otherwise, and not having ordered a hearing thereon; and

The Commission finding with respect to said application that the requirements of the applicable provisions of the act and rules thereunder are satisfied, and deeming it appropriate in the public interest and in the interest of investors and consumers that said application, as amended be granted:

It is ordered, Pursuant to Rule U-23 and the applicable provisions of said act, that the said application, as amended, be, and hereby is, granted forthwith, subject to the terms and conditions prescribed in Rule U-24 and subject to the further condition that the proposed sale of bonds shall not be consummated until the results of competitive bidding shall have been made a matter of record in this proceeding and a further order shall have been entered by this Commission in the light of the record so completed, which order may contain such further terms and conditions as may then be deemed appropriate.

It is further ordered, That the ten-day period for inviting sealed bids pursuant to Rule U-50 with respect to the said bonds be, and hereby is, shortened to seven days, so that bids may be opened on October 31, 1950.

It is further ordered, That jurisdiction be, and hereby is, reserved over the payment of all legal fees and expenses to be incurred in connection with the proposed transaction.

By the Commission.

[SEAL] NELLYE A. THORSEN,
Assistant Secretary.

[F. R. Doc. 50-9545; Filed, Oct. 27, 1950; 8:48 a. m.]

[File No. 70-2482]

AMERICAN NATURAL GAS CO. AND MILWAUKEE GAS LIGHT CO.

ORDER GRANTING AND PERMITTING APPLICATION-DECLARATION TO BECOME EFFECTIVE

At a regular session of the Securities and Exchange Commission, held at its office in the city of Washington, D. C., on the 23d day of October A. D. 1950.

American Natural Gas Company ("American Natural"), a registered holding company, and its public-utility subsidiary, Milwaukee Gas Light Company ("Milwaukee"), having filed a joint application-declaration and amendments thereto, pursuant to sections 6 (b), 9 (a), 10, 12 (f) and 12 (c) of the Public Utility Holding Company Act of 1935 ("act") and Rules U-42 and U-50 promulgated under the act, with respect to the following proposed transactions:

Milwaukee proposes to issue and sell at competitive bidding, pursuant to the provisions of Rule U-50, $27,000,000 principal amount of First Mortgage Bonds, — percent series due 1975 and $6,000,000 principal amount of — percent Sinking Fund Debentures due November 1, 1970. The bonds are to be issued under and secured by an Indenture of Mortgage and a Supplemental Indenture, both to be dated as of November 1, 1950. The debentures are to be issued under and subject to the terms of an Indenture to be dated November 1, 1950. The interest rates on the bonds and on the debentures (which shall be multiples of ⅛ of 1 percent) and the prices, exclusive of accrued interest, to be paid to the company (which shall not be less than 100 percent or more than 102.75 percent of the principal amount of said bonds and debentures) are to be determined by competitive bidding.

Prior to the sale of the bonds and debentures Milwaukee also proposes to issue and sell to its parent, American Natural, at the par value thereof, $12 per share, 250,000 shares of common stock. American Natural owns 99.84 percent of the outstanding shares of common stock of Milwaukee; the acquisition of the 250,000 additional shares will increase its holdings by 18.3703 percent and, pursuant to the preemptive rights of the holders of the minority of its common stock, Milwaukee proposes to give such stockholders the right to subscribe, at $12 per share, to an additional number of shares of common stock (estimated at 409 shares) equal to 18.3703 percent of the number of shares of common stock held by them. No fractional shares are to be issued; subscription rights of the minority stockholders are to be adjusted to the nearest full share. In order to make possible the foregoing transactions, Milwaukee proposes to amend its Articles of Incorporation to increase the authorized number of shares of common stock from 1,500,000 to 2,000,000.

The application-declaration states that the proceeds received from the sale of the bonds, debentures and common stock are to be used by Milwaukee (a) to redeem its outstanding $13,334,000 principal amount of 4½ percent bonds series due 1967 at principal amount plus premium aggregating $13,667,350, (b) to retire its outstanding 7 percent preferred stock at the call price (par value plus premium) of $2,100,000, (c) to pay the principal of its outstanding 2¾–3 percent serial notes in the principal amount of $4,050,000 and its outstanding 2½ percent bank loan in the principal amount of $6,100,000, and (d) to provide funds for the expansion of facilities and reimbursement of the treasury for expenditures made for such purpose. Of the proceeds received from the sale of the bonds $5,000,000 is to be deposited with the mortgage indenture trustee and be subject to subsequent withdrawal in accordance with the provisions of the indenture. It is also stated that unpaid interest on the bonds, serial notes and bank loans, and the unpaid dividends on the preferred stock, accrued in each case to the date of redemption or payment, are to be paid out of general funds of the company.

The debentures are not to be issued and sold unless the bonds are concurrently issued and sold, but the bonds may be issued and sold whether or not the debentures are issued and sold. In the event the bonds, but not the debentures, are issued and sold the outstanding 4½ percent bonds, and the 2½ percent bank loan notes are to be retired, and the Credit Agreements under which they are issued cancelled, but the outstanding 2¾–3 percent serial notes and the 7 percent cumulative preferred stock will not be retired for the time being; and

The record disclosing that the issue and sale by Milwaukee of the common stock has been authorized by the Public Service Commission of Wisconsin, the state commission of the state in which Milwaukee is organized and doing business; that Commission also having stated in its Decision and Certificate of Authority issued October 18, 1950 that authority to issue the bonds and debentures would be granted after certain data relating thereto are filed and found to be reasonable and provided the terms include debt reduction programs in at least the amounts represented; said application-declaration stating that no regulatory authority has jurisdiction with respect to the proposed transactions other than said state commission and the Securities and Exchange Commission; and

Said application-declaration having been filed on September 21, 1950 and the last amendment thereto having been filed October 20, 1950, and notice of said filing having been given in the form and manner prescribed in Rule U-23 promulgated under the act, and the Commission having received no request for a hearing with respect to said application-declaration within the period specified in said notice, or otherwise, and not having ordered a hearing with respect thereto; and

Applicants-declarants having requested that the period provided under Rule U-50 for inviting bids for the bonds and debentures be shortened from ten to six days, and that the Commission enter an order, to become effective upon its issuance, on or before October 23, 1950 granting and permitting to become effective the application-declaration, as amended; and

The Commission finding with respect to the proposed transactions that the requirements of the applicable provisions of the act and the rules promulgated thereunder are satisfied and that no adverse findings are necessary, and deeming it appropriate in the public interest and in the interest of investors and consumers that said application-declaration, as amended, be granted and permitted to become effective forthwith, subject to the conditions hereinafter stated, and further deeming it appropriate to grant the request that the period for inviting bids be shortened from ten to six days, and that the effective date of this order be accelerated:

It is ordered, Pursuant to Rule U-23 and the applicable provisions of the act, that said application-declaration, as amended, be, and it hereby is, granted and permitted to become effective forthwith, subject, however, to the terms and conditions prescribed in Rule U-24, and subject to the further condition that the sale by Milwaukee Gas Light Company of its bonds and debentures shall not be made until the results of competitive bidding pursuant to Rule U-50 shall have been made a matter of record in these proceedings and a further order shall have been entered by the Commission in the light of the record as so supplemented, which order may contain such terms and conditions as may then be deemed appropriate, jurisdiction being hereby reserved for such purpose and with respect to the payment of fees and expenses in connection with the proposed transactions:

It is further ordered, Pursuant to the request of applicants-declarants that the ten-day period for inviting bids as provided in Rule U-50 be, and it hereby is, shortened to a period of not less than six days, and that this order shall become effective upon its issuance.

By the Commission.

[SEAL] NELLYE A. THORSEN, *Assistant Secretary.*

[F. R. Doc. 50-9546; Filed, Oct. 27, 1950; 8:48 a. m.]

DEPARTMENT OF JUSTICE

Office of Alien Property

AUTHORITY: 40 Stat. 411, 55 Stat. 839, Pub. Laws 322, 671, 79th Cong., 60 Stat. 50, 925; 50 U. S. C. and Supp. App. 1, 616; E. O. 9193, July 6, 1942, 3 CFR, Cum. Supp., E. O. 9567, June 8, 1945, 3 CFR, 1945 Supp., E. O. 9788, Oct. 14, 1946, 11 F. R. 11981.

[Vesting Order 15222]

EMMA KUHLEMEIER

In re: Trust under Item 2 of paragraph sixth of the will of Emma Kuhlemeier, deceased. File No. D-28-12831; E. T. sec. No. 17000.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Sophie Auguste Hirlehei (Hirlehi), Heinrich Wilhelm Christian Hirlehei (Hirlehi), Marie Henriette Sophie Luise Klaus and Wilhelm Friedrich Christian Hirlehei (Hirlehi), whose last known address is Germany, are residents of Germany and nationals of a designated enemy country (Germany);

2. That all right, title, interest and claim of any kind or character whatsoever of the persons named in subparagraph 1 hereof, and each of them, in and to the trust created under Item 2 of Paragraph Sixth of the Will of Emma Kuhlemeier, deceased, is property payable or deliverable to, or claimed by, the aforesaid nationals of a designated enemy country (Germany);

3. That such property is in the process of administration by Jay Franklin Ziegenfuss and by Henry M. Keller, as trustees, acting under the judicial supervision of the Orphans' Court of Philadelphia County, Philadelphia, Pennsylvania;

and it is hereby determined:

4. That to the extent that the persons named in subparagraph 1 hereof are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on October 16, 1950.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON, *Assistant Attorney General, Director, Office of Alien Property.*

[F. R. Doc. 50-9567; Filed, Oct. 27, 1950; 8:52 a. m.]

[Vesting Order 15233]

JOHN WEBER

In re: Estate of John Weber, deceased. File No. D-28-10830; E. T. sec. 15200.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Anna Ella Baer, nee Boehm, Alfred Boehm, Johanna Elsa Krause, nee Dunger, and Paul Eberhard Dunger, whose last known address is Germany, are residents of Germany and nationals of a designated enemy country (Germany);

2. That all right, title, interest and claim of any kind or character whatsoever of the persons named in subparagraph 1 hereof, and each of them, in and to the estate of John Weber, deceased, is property payable or deliverable to, or claimed by, the aforesaid nationals of a designated enemy country (Germany);

3. That such property is in the process of administration by Anthony T. Woolley, as administrator, acting under the judicial supervision of the County Court of Monmouth County, Probate Division, Freehold, New Jersey;

and it is hereby determined:

4. That to the extent that the persons named in subparagraph 1 hereof are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on October 16, 1950.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON, *Assistant Attorney General, Director, Office of Alien Property.*

[F. R. Doc. 50-9568; Filed, Oct. 27, 1950; 8:52 a. m.]

[Vesting Order 15258]

CARL LANDSBERG

In re: Estate of Carl Landsberg, deceased. File No. D-28-2051; E. T. sec. 2352.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Lina Heilbut and Jenny Prager, whose last known address is Germany, are residents of Germany and nationals of a designated enemy country (Germany);

2. That all right, title, interest and claim of any kind or character whatsoever of the persons named in subparagraph 1 hereof in and to the Estate of Carl Landsberg, deceased, is property payable or deliverable to, or claimed by, the aforesaid nationals of a designated enemy country (Germany);

3. That such property is in the process of administration by L. Julian Harris, as administrator de bonis non, acting under the judicial supervision of the Probate Court of Cook County, Illinois;

and it is hereby determined:

4. That to the extent that the persons named in subparagraph 1 hereof, are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on October 18, 1950.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 50-9569; Filed, Oct. 27, 1950; 8:52 a. m.]

[Vesting Order 15263]

THEODORE WEICKER, SR., ET AL.

In re: Trust Agreement dated April 21, 1932, between Theodore Weicker, Sr., grantor, and Theodore Weicker, Sr., Florence Palmer Weicker and Theodore Weicker, Jr., trustees, F/B/O Anna Damm, the primary beneficiary, and others. File F-28-7089 D-1, E-1 and G-1.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Anna Damm, Wilhelm Damm and Herman Damm, whose last known address is Germany, are residents of Germany and nationals of a designated enemy country (Germany);

2. That all right, title, interest and claim of any kind or character whatsoever of the persons named in subparagraph 1 hereof, and each of them, in and to and arising out of or under that certain trust agreement dated April 21, 1932, by and between Theodore Weicker, Sr., grantor, and Theodore Weicker, Sr., Florence Palmer Weicker and Theodore Weicker, Jr., trustees, for the benefit of Anna Damm, the primary beneficiary, and others, presently being administered by Theodore Weicker, Jr., Lowell P. Weicker and Frederick E. Weicker, as trustees, 745 Fifth Avenue, New York, New York, is property within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid nationals of a designated enemy country (Germany);

and it is hereby determined:

3. That to the extent that the persons named in subparagraph 1 hereof are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on October 18, 1950.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 50-9567; Filed, Oct. 27, 1950; 8:52 a. m.]